

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

<b>IN RE:</b>	)	
	)	
<b>CIRCUIT CITY STORES, INC., et al.,</b>	)	<b>Case No. 08-35653 (KRH)</b>
	)	<b>(Chapter 11)</b>
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	

**LIQUIDATING TRUST'S RESPONSE IN OPPOSITION TO THE MOTION OF THE  
STATE OF CALIFORNIA, STATE BOARD OF EQUALIZATION TO (I) RECONSIDER  
AND VACATE PRIOR ORDER OF THE COURT EXPUNGING CLAIM NUMBER  
13049; AND (II) DEEM CLAIM NUMBER 13049 TIMELY FILED**

Alfred H. Siegel (the "Trustee"), the duly appointed trustee of the Circuit City Stores, Inc. Liquidating Trust (the "Liquidating Trust" or "Trust"), pursuant to the *Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official Committee of Creditors Holding General Unsecured Claims* in the above captioned cases of the above referenced estates of Circuit City Stores, Inc. *et al.*, (collectively, the "Debtors") files this response in opposition (the "Response") to The State of California, State Board of Equalization's ("BOE") *Motion to (i) Reconsider and Vacate Prior Order of the Court Expunging Claim Number 13049; and (ii) Deem Claim Number 13049 Timely Filed* (the "Motion to Reconsider") (D.E. No. 10675), and in support thereof states as follows:

**I. PRELIMINARY STATEMENT**

BOE's Motion to Reconsider, filed more than thirteen months after this Court's entry of the Expungement Order,<sup>1</sup> and almost two years after the passing of the Claims Bar Date, seeks to deem timely a previously disallowed late filed claim that lacks substantive merit. BOE must

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<sup>1</sup> For ease of reference, all capitalized terms shall have the same meaning as defined by BOE in the Motion to Reconsider unless otherwise defined herein.

show both that (1) the Expungement Order should be set aside under F.R.B.P. 3008, and (2) the bankruptcy court should deem its late filed claim as timely based on "excusable neglect" under F.R.B.P. 9006(b)(1). BOE's Motion to Reconsider fails to meet those burdens and should be denied with prejudice because the relief sought therein lacks both a legal and factual basis.

First, the factual record in this case conclusively demonstrates that BOE's prolonged inaction with respect to BOE's Claim No. 13049 (the "Disallowed Claim") is anything but excusable given BOE's failure to: (i) timely file the Disallowed Claim despite actual notice of the order for relief and the Bar Date; (ii) respond to the Debtors' Claims Objection disallowing the Disallowed Claim despite actual notice of the Claims Objection; (iii) timely move to deem the Disallowed Claim timely despite actual knowledge that the Disallowed Claim was filed after the Bar Date; and (iv) timely move to reconsider the Expungement Order despite actual knowledge of its entry by the Court. Second, the relief sought in the Motion to Reconsider is barred by the doctrine of laches as BOE's protracted inaction has prejudiced the Trust's ability to defend the Disallowed Claim on the merits. Third, the Disallowed Claim is without merit. Accordingly, the Trust respectfully requests that the Court enter an Order denying the Motion to Reconsider with prejudice.

**II. FACTS WARRANTING DENIAL OF MOTION TO RECONSIDER  
AND DENIAL OF REQUEST TO TREAT CLAIM AS TIMELY FILED**

The following chronology reveals the BOE's utter failure to act in any diligent, reasonable or good faith fashion, and the BOE's concession that the Disallowed Claim is meritless.

1. On December 11, 2008, the Court entered an Order establishing May 11, 2009 as the bar date for governmental units to file a proof of claim (the "Governmental Bar Date Order") (Docket No. 890). The Governmental Bar Date Order provided in relevant part that:

- a. the Debtors shall serve a notice of bar date in the form attached to the Governmental Bar Date Order as Exhibit 1 (the "Governmental Bar Date Notice") by first class mail on or before December 19, 2008 to all known creditors (Governmental Bar Date Order at ¶7);
  - b. the Debtors shall publish the Governmental Bar Date Notice in the national edition of the Wall Street Journal by no later than December 30, 2008 (Governmental Bar Date Order at ¶8); and
  - c. any creditor that is required to file but fails to file a proof of claim in accordance with the procedures set forth in the Governmental Bar Date Order shall be forever barred, estopped, and enjoined from asserting any claim against the Debtors that is in an amount exceeding the undisputed amount scheduled by the Debtors, if any, or that is of a different nature or classification scheduled by the Debtors (Governmental Bar Date Order at ¶12).
  - d. the Bar Date Notice approved by the Governmental Bar Date Order includes express, emphasized language warning claimants that claims must be RECEIVED by the Bar Date. (Governmental Bar Date Order, attached Notice).
2. On November 12, 2008, the Court appointed Kurtzman Carson Consultants, LLC ("KCC") as claims, noticing, and balloting agent for the Debtors in these Chapter 11 cases. On or about December, 2008, the Bar Date was clearly identified and posted by KCC on its website at [www.kccclcc.net/circuitcity](http://www.kccclcc.net/circuitcity) (the "KCC Website") under the section of the KCC Website entitled "Important Dates, Deadlines & Documents." The items on the "Important Dates, Deadlines & Documents" section appear in chronological order and the Bar Date is the sixth item on the list. Additionally, on or about December, 2008, a link to the Governmental Bar Date

Notice was posted next to the Bar Date in the "Important Dates, Deadlines & Documents" section of the KCC Website.

3. On December 17, 2008, BOE was served with a copy of the Governmental Bar Date Notice via first class mail. *See* Affidavit of Service of KCC (Docket No. 1314). In addition, on December 24, 2008, the Debtors published the Governmental Bar Date Notice in the national edition of the Wall Street Journal. *See* Affidavit of Publication (Docket No. 1395).

4. On January 10, 2009, after consulting with its tax counsel (Akerman Senterfitt), Circuit City Stores West Coast Inc. took sales tax deductions on line 10a1 of its Q4 2008 State, Local and District Sales and Use Tax Return on line for bad debt losses on taxable sales for the period of April 1, 2005 through October 31, 2008 (the "Deductions").

5. On April 24, 2009, the BOE sent Circuit City Stores West Coast, Inc. a letter enclosing its Report of Field Audit and Notice of Determination (the "Assessment"). The notice indicated a tax liability owing by the Debtors in the amount of \$2,811,230.23. The tax assessment consists of \$2,537,420.57 relating to the Deductions, \$240,779.66 relating to a sales tax assessment for bad debts claimed relating to returned checks and fraud losses ("Bad Check/Fraud Deductions"), and \$33,030.00 relating to the tax exempt portion of the audit based on the error factor from the prior audit. In the Assessment, the auditor noted that "due to the bar date, we are unable to grant the taxpayer additional time to document the bad debts claims" and "the taxpayer does not agree with the audit findings." Affidavit of Jeff McDonald (the "McDonald Affidavit")<sup>2</sup> at ¶8; Affidavit of Jeff Knopke (the "Knopke Affidavit")<sup>3</sup> at ¶8.

6. BOE acknowledges having actual knowledge of the Bar Date in this case as early as April 29, 2009, twelve days prior to the Bar Date. *See* Motion to Reconsider at ¶6-7.

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<sup>2</sup> A true and correct copy of the McDonald Affidavit is attached hereto as Exhibit "A."

<sup>3</sup> A true and correct copy of the Knopke Affidavit is attached hereto as Exhibit "B."

7. BOE filed the following claims, by regular mail, that were stamped by the Court on or before the May 11, 2009 Bar Date (the "Timely Filed Claims"):

a. priority claim in the amount of \$36,033.68 against Circuit City Purchasing Company, LLC, received on March 16, 2009 (Claim No. 12002);

b. administrative claim in the amount of \$325,605.29 against Circuit City Stores, Inc., received on May 11, 2009 (Claim No. 13186); and

c. administrative claim in the amount of \$2,525,699.69 against Circuit City Stores West Coast, Inc., received on May 11, 2009 (Claim No. 13187).

*See* Claim Nos. 12002, 13186, and 13187 and Motion to Reconsider at ¶7(b), 8.

8. On May 15, 2009, four days after the Bar Date, KCC received the Disallowed Claim filed as a priority tax claim in the amount of \$2,846,666.34 for unpaid tax liability asserted by BOE against Debtor Circuit City West Coast, Inc. (hereinafter the Disallowed Claim collectively with the Timely Filed Claims shall be referred to as the "BOE Claims"). *See* Claim No. 13049 and Motion to Reconsider at ¶7(a).

9. The underlying basis for the Disallowed Claim is the same amounts assessed in the Assessment, plus an additional \$12,908 that the BOE separately assessed the Debtors for hazardous substances tax for the period of January 1, 2008 through December 31, 2008. Based on its preliminary research, the Trust believes the \$12,908 assessment is also without merit. Affidavits of Jeff McDonald and Jeff Knopke at ¶ 9.

10. On February 19, 2010, the Debtors filed the Claims Objection seeking to expunge the Disallowed Claim on the basis that it was filed after the Bar Date. *See* D.E. No. 6567 and Motion to Reconsider at ¶9.

11. The deadline to respond to the Claims Objection was 4:00 p.m. on March 18, 2010 (the "Response Deadline"). *See* Claims Objection at p. 18.

12. On March 9, 2010, nine days prior to the Response Deadline and sixteen days prior to the Objection Hearing, Peter O. Larsen, Esq., of the law firm of Akerman Senterfitt, the Debtors' outside tax counsel ("Larsen"), advised Roberta Cornell of the BOE's Legal Division, Investigations and Special Operations Branch (MIC 55), through e-mail correspondence, that the Debtors had filed an objection to the Disallowed Claim on the basis that it was filed after the Bar Date. *See* Affidavit of Peter O Larsen (the "Larsen Affidavit")<sup>4</sup> at ¶8 and Exhibit A thereto.

13. On March 11, 2010, Larsen attended an in person meeting with Roberta Cornell, Sid Zigelman (BOE's Acting Business Taxes Administrator), and Larry Brammer (BOE's District Administrator for Circuit City) (collectively, the "BOE Representatives") in which he again informed BOE that the Debtors had filed an objection to the Disallowed Claim on the basis that it was filed after the expiration of the Bar Date and that the Disallowed Claim lacked substantive merit in any event. *See* Larsen Affidavit at ¶9. In fact, Larsen advised Larry Brammer of these points a second time at a meeting later in the day. *Id.*

14. Despite having received actual knowledge on at least two separate occasions that the Debtors had objected to the Disallowed Claim as a late filed claim, BOE failed to file any response to the Claims Objection or request for additional time to respond. *See generally*, Motion to Reconsider.

15. The Claims Objection was heard by the Court on March 25, 2010 (the "Objection Hearing"). BOE did not make an appearance at the Hearing.

16. On March 31, 2010, the Court entered the Expungement Order expunging the Disallowed Claim. *See* Docket No. 7067 and Motion to Reconsider at ¶10.

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<sup>4</sup> A true and correct copy of the Larsen Affidavit is attached hereto as Exhibit "C."

17. On August 19, 2010, BOE received actual notice that the Disallowed Claim was expunged pursuant to Expungement Order by virtue of e-mail correspondence sent by Maria Carantzas, Esq. ("Carantzas"), also of Akerman Senterfitt, to Cindy Burba, a BOE BTSI, Technical Advisor to the BOE OH Administrator, who was working on the Circuit City case. *See* Affidavit of Maria Carantzas (the "Carantzas Affidavit")<sup>5</sup> at ¶ 12 and Exhibit A thereto.

18. On August 31, 2010, Irvin Cooke, BOE's supervising tax auditor on this matter, advised the Debtors through e-mail correspondence to Carantzas that BOE was allowing 100% of the sales tax deductions for bad debt losses on taxable sales and had so informed Ms. Burba, who works for Larry Brammer. *See* Carantzas Affidavit at ¶ 14 and Exhibit B thereto. This is an admission by BOE that the Disallowed Claim has no merit.

19. On October 11, 2010, the Debtors forwarded BOE a copy of the Expungement Order through e-mail correspondence sent from Carantzas to Zoila Saquicela, one of BOE's auditors whose supervisor is Irvin Cooke. *See* Carantzas Affidavit at ¶ 16 and Exhibit C thereto. That same day, Ms. Saquicela acknowledged the receipt of the Expungement Order and advised the Debtors through e-mail correspondence that she attached the Expungement Order to the reaudit report for further review by BOE. *Id.* and Exhibit D thereto.

20. On October 28, 2010, six months prior to BOE's filing of the Motion to Reconsider, the Debtors again informed BOE through letter correspondence sent by Larsen that the Disallowed Claim was expunged pursuant to the Expungement Order. *See* Larsen Affidavit at ¶ 10 and Exhibit B thereto.

21. From November, 2010 through January, 2011, the Debtors contacted BOE in an effort to resolve the BOE Claims and were repeatedly advised to contact a different BOE representative, to wit:

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<sup>5</sup> A true and correct copy of the Carantzas Affidavit is attached hereto as Exhibit "D."

a. on December 7, 2010, the Debtors were informed to deal with Mr. Ken Parsons, BOE's bankruptcy auditor,

b. in early January, 2011, the Debtors were informed to deal with Victoria Baker, BOE's in-house counsel, and

c. on January 12, 2011, the Debtors were informed to deal with Todd Duffy, Esq., BOE's outside counsel.

*See* Affidavit of Tim Gillis at ¶¶ 4-6 (the "Gillis Affidavit").<sup>6</sup>

22. On January 12, 2011, during Mr. Gillis' phone conference with Ms. Baker, Mr. Gillis again informed the BOE that the Disallowed Claim was expunged pursuant to the Expungement Order. Gillis Affidavit at ¶ 7.

23. On January 27, 2011, more than three months prior to the filing of the Motion to Reconsider, Mr. Gillis contacted Mr. Duffy to discuss global resolution of the BOE Claims. During the January 27, 2011 phone conference, the BOE stated for the first time that it intended to seek reconsideration of the Expungement Order or ask the Court to treat the Disallowed Claim as timely filed.

24. In late April, 2011, Mr. Gillis contacted Mr. Duffy to discuss the prospect of a proposed global settlement offer to resolve all the BOE claims. Gillis Affidavit at ¶ 8.

25. On May 19, 2011, sixteen days after the filing of the Motion to Reconsider, Mr. Gillis conveyed by email to Mr. Duffy the first proposed global settlement agreement offered by either the Debtors or the Trust. Gillis Affidavit at ¶ 9. The May 19th E-mail was the first discussion between the Debtor and BOE that contained any dollar figures. The proposal

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<sup>6</sup> A true and correct copy of the Gillis Affidavit is attached hereto as Exhibit "E." Mr. Gillis is an attorney with Akerman Senterfitt, the Debtors and Trust's outside tax counsel.



included in the May 19th E-mail did not include any allocation as to the proposed settlement among the BOE Claims. *See* Gillis Affidavit at ¶ 9.

26. Significantly, the Debtor and BOE never agreed (or even discussed): (i) permitting the Disallowed Claim to be deemed timely; or (ii) staying the time for BOE to file a motion for reconsideration of the Expungement Order. *See* Larsen Affidavit at ¶ 12, Carantzas Affidavit at ¶ 18; Gillis Affidavit at ¶ 10; McDonald Affidavit at ¶ 12; Knopke Affidavit at ¶ 12.

### **III. THE BOE CAN'T MEET ITS BURDENS TO SUPPORT THE RELIEF REQUESTED IN THE MOTION**

It is the BOE's burden to show that (1) the Expungement Order should be set aside under F.R.B.P. 3008, and (2) the bankruptcy court should deem its late filed claim as timely based on "excusable neglect" under F.R.B.P. 9006(b)(1). The Motion fails to meet those burdens and should be denied with prejudice because: (i) BOE fails to satisfy the requisite standards for relief, particularly a showing of "excusable neglect"; (ii) the relief sought is barred by laches; and (iii) the Disallowed Claim is substantively without merit.

A creditor moving for reconsideration of an order disallowing its claim under F.R.B.P. 3008 bears the burden of proving that reconsideration of the claim is appropriate. *In re Durham*, 329 B.R. 899 (Bankr. M.D. Ga. 2005) (citing *In re Rayborn*, 307 B.R. 710, 720 (Bankr. S.D. Ala. 2002)). Similarly, the party seeking to deem a late filed claim as timely bears the burden of proof. *In re Circuit City Stores, Inc. (EDC contested matter)*; Case No. 08-35653, (Docket No. 6465), p. 9 (Bankr. E.D.Va. February 4, 2010) (copy attached hereto as Exhibit F).

#### **A. Neither the BOE's Failure to Timely File the Disallowed Claim nor to Seek to Deem the Disallowed Claim Each as Timely Filed Justifies Reconsideration or Relief.**

In sum, the BOE faces a stiff burden to justify its requested relief, and fails to satisfy any

of the requisite factors, particularly “excusable neglect.”

**1. Standard for Reconsideration/Treating Late Filed Proof of Claim as Timely**

"A bar date for filing proofs of claim is important to the orderly administration of the case and prevents delays in the distribution of funds to creditors." *In re Computer Learning Centers, Inc.*, 344 B.R. 79, 89 (Bankr. E.D. Va. 2006) (J. Mayer). "This importance is highlighted by the fact that in order for a claimant to file a proof of claim after the court prescribed bar date, the claimant must establish that the "failure to act was the result of excusable neglect." *In re Circuit City Stores, Inc.*, Case No. 08-35653, (Docket No. 7664), p. 10 (Bankr. E.D. Va. May 28, 2010) (citing *Pioneer Inv. Serv. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380 (1993)).

This Court has previously noted that, "it is not uncommon for courts to disallow a proof of claim filed just a few days after a filing deadline." *In re Circuit City Stores, Inc. (EDC contested matter)*, (Docket No. 6465), p. 9 (citing *Thompson v. E.I. DuPont de Nemours & Co., Inc.*, 76 F.3d 530, 534 (4th Cir. 1996) (refusing to enlarge the period for filing a notice of appeal when the litigant mailed the notice three days prior to the expiration of the deadline but the notice did not arrive until three days after the expiration of the deadlines); *In re Dishman*, 257 B.R. 780, 781-83 (Bankr. E.D. Va. 2000) (refusing to enlarge time for filing of complaint where complaint was filed two days late due to a delay in mail delivery caused by inclement weather); *Avnet, Inc. v. Maxwell*, 2006 U.S. Dist. Lexis 39425 (N.D. Ill. May 25, 2006) (refusing to accept late filed proof of claim where claim was faxed to claims agent on bar date and delivered by courier to claims agent one day after the bar date); *In re Yankee Distrib. Co.*, 53 B.R. 222, 223-24 (Bankr. D. Vt. 1985) (motion to allow late proof of claim was denied where proof of claim arrived one day after the bar date)). *See also*, *In re Sterling Rubber Products Co.*, 316 B.R. 485,

490 (Bankr. S.D. Ohio 2004) (denying allowance of late filed claim where proof of claim was mailed prior to bar date and received one day after bar date).

In *Pioneer*, the Supreme Court reviewed the meaning of the term “excusable neglect” in the context of Chapter 11 bankruptcies and the bankruptcy rules. The *Pioneer* court concluded that the term, in this context, is a “somewhat ‘elastic concept’ and is not limited strictly to omissions caused by circumstances beyond the control of the movant.” *Id.* at 392, (further citations omitted). In the final analysis, the Supreme Court concluded that the process of determining what types of neglect are considered excusable, “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Id.* at 395. The Supreme Court established several nonexclusive factors to consider in this analysis: 1) the reason for the delay, including whether it was within the reasonable control of the movant; 2) the danger of prejudice to the debtor; 3) the length of the delay and its potential impact on the judicial proceedings; and 4) whether the movant acted in good faith. *Id.* The Fourth Circuit has previously stated that excusable neglect is not easily demonstrated. *Thompson v. DuPont de Nemours & Co.*, 76 F.3d 530, 533 (4th Cir. 1996).

BOE's failure to timely file the Disallowed Claim, although only four days late, was conclusively the result of its neglect. Neglect encompasses inaction caused by "inadvertence, mistake, or carelessness." *Pioneer*, 507 U.S. at 388. BOE timely received notice of the Bar Date established in these cases through both mail and publication. Despite acknowledging receiving notice of the Bar Date, BOE failed to timely file the Disallowed Claim or to timely seek for the Disallowed Claim to be deemed timely. Similarly, BOE failed to timely file the Motion to Reconsider notwithstanding its receipt of multiple notices of entry of the Expungement Order.

As further discussed below, BOE's prolonged inaction is not remotely excusable under the *Pioneer* factors.

**2. BOE's Failure to Timely file the Disallowed Claim and Delays in Filing the Motion to Reconsider the Expungement Order and to Deem Disallowed Claim Timely were Not Beyond its Control, and do Not Constitute "Excusable Neglect".**

When analyzing the reason for delay prong of the *Pioneer* test, courts "must consider not only the reason for the delay itself, but also whether the reason was beyond the reasonable control of the claimant." *In re National Steel*, 316 B.R. 510, 517 (N.D. Ill. 2004). "The most important factors identified in *Pioneer* for determining whether 'neglect' is 'excusable' is the reason for the failure to file." *In re Circuit City Stores, Inc.* (Docket No. 6465), p. 11 (citing *Thompson*, 76 F.3d at 534). "[T]he four Pioneer factors do not carry equal weight; the excuse given for the late filing must have the greatest import. *Id.* While prejudice, length of delay, and good faith might have more relevance in a close[] [sic] case, the reason-for-delay factor will always be critical to the inquiry." *Id.* (citing *In re Enron Corp.*, 419 F.3d 115, 122-24 (2d Cir. 2005) (quoting *Graphic Commc'ns. Int'l Union v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5-6 (1st Cir. 2001)); *see also Pioneer*, 507 U.S. at 395 (stating that it is also significant whether or not the reason for the failure to file was "within the reasonable control of the movant"))).

Administrative failure on the part of the claimant is insufficient to warrant a finding of "excusable neglect." *Id.* (citing *Thompson*, 76 F.3d at 534 ("[A] mere concession of palpable oversight or administrative failure generally has been held to fall short of the necessary showing. . . .")) (quoting *In re O.P.M. Leasing Serv., Inc.*, 769 F.2d 911, 917 (2d Cir. 1985)); *see also In re Kmart Corp.*, 381 F.3d 709, 715 (7th Cir. 2004); *United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004); *Graphic Communication International Union Local 12-N v. Quebecor Printing*

*Providence, Inc.*, 270 F.3d 1, 5 (1st Cir. 2001) (stating that while *Pioneer* provides a more forgiving standard for excusable neglect than prior case law, “there still must be a satisfactory explanation for the late filing” and “the excuse given for the late filing must have the greatest import”).

**a. BOE Could Have and Should Have Timely Filed the Disallowed Claim.**

BOE's failure to timely file the Disallowed Claim was not beyond its control. Considering the magnitude of BOE's Disallowed Claim and BOE's knowledge of this bankruptcy case from at least March 16, 2009 (the date BOE's first claim was filed with the Court), it is impossible to justify BOE's delay until the last possible moment to transmit the claim, and to do so via the U.S. Mail. BOE admits that it had actual notice of the Bar Date as early as April 29, 2009, twelve days prior to the Bar Date. Motion to Reconsider at ¶7. The Bar Date Notice clearly emphasizes (in bold and underlined type) that claims must be RECEIVED by the Bar Date. BOE fails to provide any explanation for waiting until April 29, 2009 to mail the Disallowed Claim, when it had already prepared and filed a claim in the bankruptcy case as early as March 16, 2009. BOE also chose to send the claim via regular mail rather than any expedited delivery service.

Once the Disallowed Claim was mailed, BOE argues that the matter was beyond its control. But BOE could have tried to track the shipment or at least called KCC to ensure that the claim had been received prior to the Bar Date. If delivery on the final day was in doubt, BOE could have sent another copy by overnight delivery, or faxed a duplicate claim to a local courier who could have hand-delivered the claim to KCC. In the alternative, BOE might have instantaneously filed a motion on the Bar Date requesting a one or two day extension of the Bar Date, and explaining the situation as contemplated by Fed. R. Bankr. P. 9006(b). *See Sterling*

*Rubber, supra*, 316 B.R. at 490 (holding that creditor who mailed proof of claim by U.S. Mail prior to bar date that was received by court one day after claims bar date lacked excusable neglect to deem claim timely where creditor failed to: (i) confirm whether claim was received by clerk on bar date; (ii) seek extension of bar date; and (iii) timely file a motion to deem claim timely); *In re Circuit City Stores, Inc.*, (Docket No. 6465), p. 12 (denying allowance of administrative expense claim filed forty days after administrative claims bar date where claimant had notice of bar date and had the ability to timely file administrative expense claim).

**b. BOE Could Have and Should Have Timely Sought to Deem the Disallowed Claim as Timely.**

Even if the Court disregards BOE's neglect in ensuring that the Disallowed Claim was timely filed, BOE's delay in seeking to deem the Disallowed Claim as timely cannot be explained. BOE failed to confirm whether the Disallowed Claim was timely filed. Had BOE taken this minimal investigatory step on the day after the May 11, 2009 Bar Date, it would have discovered that the Disallowed Claim was not timely. Having discovered the late filing, BOE could have then filed its motion to deem the Disallowed Claim timely. Instead, BOE inexplicably waited for a period of almost two years after the expiration of the Bar Date to seek to allow the Disallowed Claim as timely. During that time, BOE failed to respond to the Debtors' Claims Objection, the Court entered the Expungement Order expunging the Disallowed Claim, and the Debtors confirmed their Plan. While BOE's neglect is apparent on its face, BOE has failed to provide a single cognizant basis for failing to: (i) confirm that the Disallowed Claim was timely filed; and (ii) timely move to have the Disallowed Claim be deemed timely. BOE could have and should have taken these actions well in advance of the confirmation of the Debtors' Plan, but much less well prior to May 3, 2011.

The allowance of the Disallowed Claim at this juncture would have the same effect as allowing a post-confirmation amendment to an allowed claim seeking to increase the allowed claim by in excess of \$2.8M, the face amount asserted by the Disallowed Claim. A number of opinions have held in the context of amendments to proofs of claim that a post-confirmation amendment to a proof of claim should be prohibited absent some "compelling reason." *In re Winn Dixie (IRT Partners, L.P. v. Winn-Dixie Stores)*, 639 F.3d 1053, 2011 U.S. App. LEXIS 8896 (11th Cir. April 29, 2011) (holding that confirmation of liquidating plan precluded post-confirmation amendment of a creditor's claim absent compelling circumstances justifying the amendment)(copy attached as Exhibit G); *In re International Horizons, Inc.*, 751 F.2d 1213, 1216-1217 (11th Cir. 1985) ("[T]he court must subject post bar date amendments to careful scrutiny to assure that there was no attempt to file a new claim under the guise of amendment"); *Holstein v. Brill*, 987 F.2d 1268 (7th Cir. 1993) (holding that confirmation of plan precludes post-confirmation amendments absent some "compelling reason").

In *Winn Dixie*, two creditors sought to amend their claims less than two months after the confirmation of a liquidating plan to include omitted rejection damages. *Winn Dixie*, 2011 U.S. App. LEXIS 8896, \*3. In the aggregate, the amended claims sought to assert additional indebtedness in excess of \$1,000,000. *Id.* The 11th Circuit held that the amendments to the claims would not be allowed because the record in the case indicated no reason for the delay related to the requested amendments. *Id.* at \*7.

Here, as in *Winn Dixie*, BOE failed to object to the confirmation of the Debtors' liquidating plan, the Trust has already made distributions to allowed administrative and priority claims under the Plan, and the last date to object to administrative claims passed on March 1, 2011. Moreover, the amount of indebtedness asserted in the Disallowed Claim and BOE's delay

in filing the Motion to Reconsider are substantially greater<sup>7</sup> than the post-confirmation amendments ultimately denied in *Winn Dixie*. Finally, as in *Winn Dixie*, BOE has failed to provide a single reason to justify BOE's post-confirmation delay in seeking to deem the Disallowed Claim timely, much less a compelling reason. Accordingly, BOE's failure to demonstrate the requisite "excusable neglect" requires that the Motion be denied in its entirety.

**2. Reconsidering the Expungement Order and Deeming the Disallowed Claim as Timely Will Prejudice the Administration of the Trust and Would Change the Facts Relied Upon in Developing the Debtors' Plan.**

In applying the *Pioneer* standard, at least one Court of Appeals has held that the prejudice outlined in *Pioneer* requires consideration of the following factors: (1) the size of the claim with respect to the rest of the estate; (2) whether allowing the late claim would have an adverse impact on judicial administration of the estate; (3) whether the plan was filed or confirmed with knowledge of the existence of the claim; (4) the disruptive effect that the late filing would have on the plan or upon the economic model upon which the plan was based; and (5) whether allowing the claim would open the floodgates to other similar claims. *In re O'Brien Environmental Energy, Inc.*, 188 F.3d 116, 126-28 (3d Cir. 1999).

At \$2,846,666.34, BOE's Disallowed Claim does not represent a large percentage of the amount of allowed priority claims. However, under the Debtors' Plan, all allowed priority claims must be paid in full. Accordingly, if the Disallowed Claim was deemed timely, the Trust would be forced to reserve for the full amount of the Disallowed Claim pending resolution of a lengthy objection on the merits, thereby not only resulting in delay and potential reduction of the

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<sup>7</sup> Compare \$2.8M indebtedness asserted in Disallowed Claim and seven month post-confirmation delay in filing Motion to Reconsider with \$1M indebtedness and two month post-confirmation delay in filing amendments to proofs of claim.



anticipated distribution to unsecured creditors, but also potentially requiring this case and the Trust to remain open pending a final resolution.

More importantly, it would be manifestly inequitable to require other creditors who have diligently prosecuted their claims to await distribution until the final disposition of the Disallowed Claim solely due to BOE's near two year delay in seeking to deem the Disallowed Claim timely. *See In re Freightway Corp.*, 171 B.R. 41, 43 (Bankr.N.D.Ohio 1994) (holding that "excusable neglect" did not exist where creditor's post-confirmation amendment of its proof of claim would delay debtor's reorganization).

In this case, the Disallowed Claim was expunged almost six months prior to confirmation of the Debtors' Plan through one of many omnibus objections designed to eliminate claims in preparation for the claims analyses necessary to prove confirmation feasibility. Thus, it is undisputed that the Plan was filed and confirmed without taking into account the allowance of the Disallowed Claim. As the Debtors' Plan consolidated the various estates, the allowance of a priority tax claim in excess of \$2.8 million solely against the estate of Circuit City West, Inc. would be a liability that would have likely changed the Debtors' consolidation analysis.

The allowance of the Disallowed Claim is unlikely to disrupt the economic model upon which the plan was based upon. However, it is axiomatic that allowance of the Disallowed Claim at this juncture will substantially prejudice the Trust and its creditors due to, *inter alia*: (i) increased administrative expenses associated with litigating the Disallowed Claim on the merits; (ii) increased administrative burdens associated with modifying both existing and future distributions to the extent all or a portion of the Disallowed Claim is ultimately allowed; and (iii) potential delay in making distributions to creditors arising from liquidation of the Disallowed Claim. *See In re US Airways, Inc.*, Case No. 04-13819-SSM, 2005 Bankr. LEXIS 2828, \*10

(Bankr. E.D.Va. December 29, 2005) (J. Mitchell) (holding that proof of claim filed seven months after claims bar date and one month after confirmation of debtor's plan did not constitute excusable neglect where creditor knew or should have known of claims bar date and allowance of late filed claim would seriously prejudice the **efficient post-confirmation administration of the case**) (emphasis added) (a copy of this decision is attached hereto as Exhibit H).

Lastly, deeming the Disallowed Claim timely at this juncture would potentially open the Trust to numerous other late-filed claims. Early in the case after the Bar Date, but before confirmation, the Debtors objected to and obtained an order from this Court disallowing numerous claims as untimely. *See* Expungement Order. Deeming BOE's Disallowed Claim timely at this juncture would potentially nullify prior orders disallowing untimely claims, opening the doors to other creditors with knowledge of the Bar Date to seek allowance of a late filed claim.

The cases cited by the BOE do not support its claim that, due the liquidating nature of the *Second Amended Plan*, the Trust will not suffer prejudice if the Disallowed Claim is deemed timely at this late stage. For example, while *Premier Membership*, 276 B.R. 709, 714 (Bankr. S.D.Fla. 2002), contains the general language cited by BOE, the late claim at issue was a general unsecured claim. The court expressly remarked that the result would be different if the late claim at issue was a **priority tax claim** that would be paid ahead of general unsecured creditors (citing to its prior decision in *Intelligent Medical Imaging, Inc.*, 262 B.R. 142 (Bankr. S.D. Fla. 2001)(emphasis added). *Crane Rental*, 341 B.R. 118, 122 (Bankr. D.Mass. 2006), also contains the general language cited by the BOE, but (i) involved a liquidating plan that was projected to pay all creditors IN FULL, (ii) the debtors conceded that they would suffer no prejudice if the late claim was allowed, and (iii) the claimant agreed not to press other creditors for a refund if

the allowance of its claim resulted in a shortage of available funds to pay all creditors 100% of their claims. In the other cases cited by BOE for the same general “prejudice” language, the plans had not been confirmed and/or no distributions had been made. *See also, In re Circuit City, et al.*, Case No. 08-35653 (Docket No. 6465), p. 9 (Bankr. E.D. Va. February 4, 2010) (denying motion to deem administrative expense claim timely filed eight months prior to confirmation of Debtors' liquidating plan due to lack of excusable neglect).

### **3. BOE Significantly Delayed Seeking to Deem the Disallowed Claim Timely**

Weighing the length of delay is an equitable determination, dependent on a case-by-case basis on the evidence presented. *National Steel, supra*, 316 B.R. at 519. The court should consider the delay in absolute terms, meaning the delay’s effect on the judicial proceedings should not be the only factor considered. *O’Brien, supra*, 188 F.3d at 130 (“although it is proper to consider the delay’s effect on the judicial proceedings, *Pioneer* teaches that we should consider the length of the delay in absolute terms . . .”).

The length of BOE’s deliberate delay in its absolute terms is significant, as the Motion was filed nearly two years after Disallowed Claim was late filed and over seven months after confirmation of the Plan. As discussed above, requiring the Trust to set a \$2.8 million reserve for BOE’s Disallowed Claim at this juncture would undermine the decisions made in the case by the Trust, affect distributions, and delay the administration of this case.

### **4. BOE Did Not Act in Good Faith**

Courts have used the length of a delay in the determination of the good faith of an act. For instance, in *In re Tannen Towers Acquisition Corp.*, 235 B.R. 748, 756 (D. N.J. 1999), the court found that the creditor acted with good faith when it sought leave for its late claim within one week of learning of the bankruptcy. BOE, however, waited 2 years until after the filing of

its Disallowed Claim after the Bar Date before filing the Motion to Reconsider. Over that time, the Debtors, with the knowledge that the Disallowed Claim was expunged, confirmed a Plan, and (as well as their successor, the Trust) negotiated the resolution of numerous claims, and entered into settlement agreements resolving multiple disputes.

The failure of BOE to file a proof of claim “until the proverbial ‘eleventh hour’” coupled with an epic delay prior to seeking judicial relief evidences BOE’s lack of diligence, if not good faith. *See Kmart Corp.*, 381 F. 3d at 715-16 (noting that the creditor’s failure to send the proof of claim until the day prior to the bar date, failure to follow up with the claims processing agency, and then, following the discovery of the untimeliness of the filing, failure to seek judicial relief for over a month shows a lack of diligence and a weak showing of good faith).

For the aforementioned reasons, BOE is unable to satisfy any of the *Pioneer* factors, in particular, the requisite excusable neglect, as necessary to support either: (i) the reconsideration of this Court's Expungement Order; or (ii) deeming the Disallowed Claim as timely filed.

**B. Neither the BOE's Failure to Timely File a Response to the Claims Objection or Timely File the Motion to Reconsider the Expungement Order Justifies a Finding of the Excusable Neglect Necessary for Reconsideration or Relief.**

In support of its failure to respond to the Claims Objection and its prolonged delay in filing the instant Motion to Reconsider, BOE alleges that (1) its earliest knowledge of the Claims Objection and the Expungement Order was October 28, 2010, and (2) it engaged in ongoing negotiations with the Debtors related to the Disallowed Claim that "fell apart at the end of February, 2011." Motion to Reconsider at ¶28.

**1. The "Excusable Neglect" Standard for Reconsideration of the Expungement Order**

"The Bankruptcy Court's discretion in deciding whether to reconsider a claim is virtually plenary, as the court may decline to reconsider **without a hearing or notice to the parties involved.**" *In re Genesis Health Ventures, Inc.*, 362 B.R. 657, 661 (D. Del. 2007) (citing *In re Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987)) (emphasis added). As demonstrated in this brief and the supporting affidavits, this Court would be justified in exercising its discretion to decline reconsider the Expungement Order.

A bankruptcy court may reconsider an order disallowing a claim for "cause" and according to the equities of the case. *Sterling Rubber, supra*, 316 B.R. at 490. The term "cause" is not defined in either the Bankruptcy Code or Bankruptcy Rules. *Rayborn, supra*, 307 B.R. at 720. However, a number of courts have held that a court should follow the guidelines set forth in the Federal Rules of Civil Procedure governing motions for relief from judgment in instances where a motion to reconsider is filed outside the time period applicable to motions to alter or amend a judgment. *Matter of Aguilar*, 861 F.2d 873 (5th Cir. 1988); *In re Pride Companies, L.P.*, 285 B.R. 366 (Bankr. N.D. Tex. 2002).

Here, the Motion to Reconsider was filed more than thirteen months after entry of the Expungement Order. Accordingly, in deciding whether "cause" exists to grant BOE's Motion to Reconsider, the Court should follow the grounds for relief articulated in Fed. R. Civ. P. 60(b) which provide:

- (b) Grounds for Relief from a Final Judgment, Order, or Proceeding.  
On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:  
(1) mistake, inadvertence, surprise, or excusable neglect;  
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

BOE's Motion to Reconsider the Expungement Order is based entirely on Rule 60(b)(1)'s "excusable neglect" as none of the remaining grounds are applicable.

**2. BOE had Actual Knowledge of the Debtors' Claims Objection Prior to Response Deadline.**

BOE's first allegation is materially false as a mountain of evidence conclusively shows that BOE had actual knowledge of both the Claims Objection and the Expungement Order several months prior to October 28, 2010. First, BOE had actual knowledge of the Claims Objection in advance of the Response Deadline and Objection Hearing. Specifically, on March 9, 2009, nine days prior to the Response Deadline and sixteen days prior to the Objection Hearing, BOE was informed of the pending Claims Objection through e-mail correspondence from the Debtors' counsel. *See* Larsen Affidavit at ¶ 8 and Exhibit A thereto. BOE was again informed of the pending Claims Objection on March 11, 2009, seven days prior to the Response Deadline and fourteen days prior to the Objection Hearing, through direct face to face communications in Sacramento, California between Mr. Larsen and the BOE Representatives. *See* Larsen Affidavit at ¶ 9.

Despite having received actual knowledge of the Claims Objection on at least two separate occasions in advance of both the Response Deadline and the Objection Hearing, BOE failed to: (i) investigate the Response Deadline; (ii) timely file a response prior to the Response Deadline; (iii) seek an extension of the Response Deadline; or (iv) appear at the Objection

Hearing. BOE could have and should have sought an extension to respond to the pending Claims Objection. At a minimum, upon learning of the Claims Objection, BOE could have and should have further investigated the Claims Objection to ascertain the Response Deadline and the date of the Objection Hearing.

Second, BOE had actual knowledge of the Expungement Order in August, 2010 at the latest, eight months prior to filing the Motion to Reconsider. On August 19, 2010, the Debtors' counsel sent BOE's representative an e-mail correspondence wherein it expressly advised BOE that the Disallowed Claim was expunged by stating the following:

On May 26, 2010, we had sent you documentation to support Circuit City's bad debt sales tax credits claimed on Circuit City's Q4 2008 sales tax return. Since that time, we learned from Circuit City's bankruptcy counsel that, **on March 31, 2010, the Bankruptcy Court granted Circuit City's objection to the bankruptcy claim related to these credits. Thus, the bankruptcy court disallowed the claim in its entirety. Based on this ruling, it is our understanding that there is no longer a pending audit assessment with regards to these credits.** The auditor (Zoila Saquicela) who was reviewing these credits wanted to close out the reaudit and wanted to know if we had reached a resolution with the Sacramento office with regards to the credits. We wanted to confirm with you before responding to the auditor that it is our understanding that the assessment related to these claims has been removed based on the bankruptcy court's actions.

*See* Carantzas Affidavit at ¶ 12 and Exhibit A thereto (emphasis added).

On August 31, 2010, BOE acknowledged receiving notice of the expungement of the Disallowed Claim by sending e-mail correspondence to the Debtors advising the Debtors that BOE would allow 100% of the Deduction previously sought by the Debtors, presumably on the basis of the Expungement Order. Thereafter, on October 11, 2010, the Debtors sent a copy of the Expungement Order to BOE by e-mail correspondence. *See* Carantzas Affidavit at ¶ 16 and Exhibit C thereto. BOE acknowledged receipt of the Expungement Order that same day by a

response e-mail that advised the Debtors that BOE would attach the Expungement Order to the reaudit report for further review. *Id.* and Exhibit D thereto.

Again, despite having received actual knowledge of the Expungement Order prior to the confirmation of the Debtors' Plan, BOE failed to timely move to reconsider the Expungement Order. Instead, BOE delayed filing the Motion to Reconsider for a period in excess of six months. During this delay, the Debtors' confirmed their Plan, the Plan became effective, the deadline to object to administrative claims passed, and the Trust began making distributions under the Plan to various creditors. BOE could have and should have filed the Motion to Reconsider in advance of confirmation of the Debtors' Plan, or at the very least prior to November 1, 2010, the effective date of the Debtors' Plan.

**3. Settlement communications with Debtors do not justify BOE's protracted inaction in moving to reconsider the Expungement Order.**

BOE argues that it delayed filing the Motion to Reconsider from October 28, 2010 until May 3, 2011, over a six month delay, because it was engaged in settlement communications with the Trust that included the Disallowed Claim. Motion to Reconsider at ¶28. Again, BOE's argument fails to provide a satisfactory explanation for BOE's prolonged delay in seeking to reconsider the Expungement Order. First, BOE had actual knowledge of the Expungement Order as early as August 19, 2010, three months prior to the settlement communications referenced by BOE. Thus, BOE could have and should have sought reconsideration of the Expungement Order at that time.

Second, the Debtors and the Trust never agreed to (or even discussed) the allowance of the Disallowed Claim in any settlement communication with the BOE. On the contrary, in every settlement communication between the parties, the Debtors and the Trust took the unwavering



position that the Disallowed Claim had no settlement value as it was properly expunged as a late filed claim pursuant to the Expungement Order. Gillis Affidavit at ¶ 10, Larsen Affidavit at ¶ 12. Moreover, the only global monetary settlement offer ever communicated to BOE by the Trust did not include an allocation as to any of the BOE Claims, and was not communicated to BOE until April, 2011, a year after the entry of the Expungement Order.

Third, even if BOE's reliance on settlement communications with Trust was justifiable, it fails to account for BOE's prolonged delay in filing the Motion to Reconsider. Specifically, by BOE's own account, any settlement communications relied upon by BOE broke down in February, 2011, more than two months prior to BOE's filing of the Motion to Reconsider. *See* Motion to Reconsider at ¶28. BOE fails to provide any justification for delaying filing the Motion to Reconsider by at least two additional months once the settlement discussions BOE allegedly relied upon broke down. No excuse is given because no excuse exists.

Fourth, reliance on settlement communications with the Debtors and the Trust does not excuse BOE's failure to: (i) timely file the Disallowed Claim; (ii) timely move to deem the Disallowed Claim as timely; or (iii) timely move to reconsider Expungement Order. The Debtors and the Trust had no legal duty to advise the BOE as to filing deadlines or any other matter with respect to the allowance of the Disallowed Claim. In this way, BOE's argument is similar to the argument this Court rejected in *Circuit City (EDC contested matter)*, p. 7 at Fn. 7 (citing to *In re Jackson*, 98 B.R. 738, 741 (Bankr. D. Md. 1986)) (stating that debtor's counsel is under no duty to respond to creditor inquiries regarding filing deadlines), and *In re First Software Corp.*, 97 B.R. 711, 719 (Bankr. D. Mass. 1988) (affirming the bankruptcy court's rejection of claimant's motion to extend time for filing and stating that debtor's counsel was under no duty to make the claimant aware of the filing deadline). Even if such a duty existed,

the Debtors more than satisfied such duty by repeatedly informing BOE of the lateness of the Disallowed Claim more than thirteen months prior to BOE's filing of the Motion to Reconsider. *See* Larsen Affidavit at ¶¶ 8-9. In fact, like counsel in the EDC contested matter in these bankruptcy cases, counsel for Circuit City was very helpful and informative in its communications with counsel for BOE. *See Circuit City, Id.* Thus, BOE could have and should have moved to deem the Disallowed Claim as timely well in advance of the settlement communications it now uses to excuse its protracted inaction. As a result of the BOE's failure to demonstrate the requisite excusable neglect, the Motion should be denied in its entirety.

**C. BOE's Requested Relief is Barred by Laches**

BOE's request to reconsider the Expungement Order and deem the Disallowed Claim timely is barred by the doctrine of laches. Laches may be asserted where there is a lack of diligence by the party against whom the defense is asserted and the lack of diligence prejudices the party asserting the defense. *Costello v. U.S.*, 365 U.S. 265, 282 (1961). The defense of laches has been held to bar late proofs of claim where the creditor fails to pursue its rights in a timely manner, resulting in prejudice to the debtor. *See In re Drexel Burnham Lambert Group, Inc.*, 157 B.R. 532, 538-39 (Bankr. S.D. N.Y. 1993) (laches barred late proof of claim where creditor waited 19 months after it had notice of bankruptcy to move to present late claim); *In re Barsky*, 85 B.R. 550, 555 (C.D. Cal. 1988), *aff'd*, 933 F.2d 1013 (9th Cir. 1991) (laches barred late proof of claim where creditor waited more than two years after plan confirmation to file proof of claim). *See also, French v. Long*, 42 F.2d 45, 47 (4th Cir. 1930) (denying motion to reconsider filed more than three years after liquidation of claim on account of laches).

Here, BOE's lack of diligence in prosecuting the Disallowed Claim is profound. BOE had notice that the Disallowed Claim was filed after the expiration of the Bar Date as early as

May 15, 2009, the date it was stamped and docketed by KCC. Despite knowledge that the Disallowed Claim was not timely filed, BOE failed to take any action to obtain Court authority to deem the Disallowed Claim as timely filed. BOE's lack of diligence is evidenced by BOE's epic delay in filing the Motion to Reconsider having now done so: (i) almost two years after the Bar Date; (ii) more than thirteen months after receiving actual notice of the Claims Objection; (iii) more than thirteen months after entry of the Expungement Order; and (iv) more than seven months after confirmation of Debtors' Plan. BOE's lack of diligence is highlighted by the fact that BOE had actual notice of the Debtors' Claims Objection before the Response Deadline and the Objection Hearing, yet it took no action to respond to the Claims Objection.

The Trust's ability to dispute BOE's Disallowed Claim on the merits has been prejudiced by BOE's unwarranted delay because the passage of time will make it difficult and potentially cost prohibitive for the Trust to obtain the documentary evidence required to challenge the Disallowed Claim. Specifically, the Trust's substantive defenses to the Disallowed Claim include defending the BOE's Assessment related to the Deductions taken by the Debtors that date back to April, 2005. While the Debtors and the Trust have provided extensive support to the BOE with regard to the Deductions, substantiation of the Deductions in an evidentiary proceeding could require the production of additional data and other electronic information from a third party finance company transacting business with the Debtors. Finance companies typically do not retain the transactional data the Trust may require to fully defend the Disallowed Claim beyond three or four years. Further, even if the Trust could locate the entire universe of documents necessary to fully evidence the Trust's defenses, it is probable that the lengthy passage of time may impact the Trust's ability to locate witnesses that could be needed to properly reconcile the transactions making up the Deductions. Thus, it is axiomatic that BOE's

delay in seeking to deem the Disallowed Claim timely could prejudice the Trust's ability to dispute the Disallowed Claim on the merits. Accordingly, the relief sought in BOE's Motion to Reconsider should be denied on the basis of laches.

**D. BOE's Disallowed Claim is Meritless.**

Even if the BOE was entitled to pursue the Disallowed Claim, such an exercise would be futile because the Disallowed Claim is substantively without merit. Specifically, on January 10, 2009, after consulting with its tax counsel (Akerman Senterfitt), Circuit City Stores West Coast, Inc. took sales tax deductions on line 10a1 of its Q4 2008 State, Local, and District Sales and Use Tax Return on line for bad debt losses on taxable sales for the period of April 1, 2005 through October 31, 2008 (the Deductions defined earlier). Affidavits of Jeff McDonald and Jeff Knopke at ¶4.

On April 24, 2009, the BOE sent Circuit City Stores West Coast, Inc. a letter enclosing its Report of Field Audit and Notice of Determination (the Assessment defined earlier). The notice indicated a tax liability owing by the Debtors in the amount of \$2,811,230.23. The tax assessment consists of \$2,537,420.57 relating to the Deductions, \$240,779.66 relating to a sales tax assessment for bad debts claimed relating to returned checks and fraud losses (the Bad Check/Fraud Deductions defined earlier), and \$33,030.00 relating to the tax exempt portion of the audit based on the error factor from the prior audit. In the Assessment, the auditor noted that “due to the bar date, we are unable to grant the taxpayer additional time to document the bad debts claims” and “the taxpayer does not agree with the audit findings.” See Affidavits of Jeff McDonald at ¶ 8 and Jeff Knopke at ¶ 8.

As shown by the detailed affidavits of Ms. Carantzas and Messrs. McDonald, Knopke, Larsen, and Gillis, the Debtors completely cooperated with the BOE's requests in connection

with the audit both before and after the Assessment. Then on August 31, 2010, Irvin Cooke, BOE's supervising tax auditor, advised the Debtors through e-mail correspondence that BOE was withdrawing its Assessment with regard to the Deductions, thus admitting that the Disallowed Claim is meritless. As a result, the BOE's Motion should be denied in its entirety.

#### IV. CONCLUSION

The factual record in this case conclusively demonstrates that BOE failed to take action on account of the Disallowed Claim every time action was demanded. as BOE failed to, *inter alia*: (i) timely file the Disallowed Claim despite actual notice of the order for relief and the Bar Date; (ii) timely move to deem the Disallowed Claim timely despite actual knowledge that the Disallowed Claim was filed after the Bar Date; (iii) respond to the Debtors' Claims Objection that sought to disallow the Disallowed Claim despite actual notice of the Claims Objection; and (iv) timely move to reconsider the Expungement Order despite actual knowledge of its entry by the Court. BOE's indifference over the course of two years was neither justified nor excusable, and on this ground alone, the Motion should be denied in its entirety.

In addition, the prejudice to the Trust arising from BOE's prolonged neglect would be considerable as deeming the Disallowed Claim timely would: (i) increase the costs of administering the Trust in order to reconcile prior distributions and setup a reserve for Disallowed Claim, (ii) potentially expose the Trust to the additional allowance of already expunged late filed claims; (iii) delay distributions on account of timely filed claims; and (iv) prejudice the Trust's ability to defend the Disallowed Claim on the merits.

In any event, even if the Court would be otherwise inclined to grant the BOE's Motion to Reconsider, the affidavits show the Disallowed Claim lacks merit, and would have been denied if timely asserted anyway.

Accordingly, for all the reasons stated herein, the Trust respectfully requests that the Court enter an Order: (i) denying the Motion to Reconsider in its entirety with prejudice; and (ii) grant such further relief as this Court deems just and equitable.

Date: July 20, 2011

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Counsel to the Circuit City  
Stores, Inc. Liquidating Trust

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Liquidating Trust's Response in Opposition to the Motion of the State of California, State Board of Equalization to (i) Reconsider and Vacate Prior Order of the Court Expunging Claim Number 13049; and (ii) Deem Claim Number 13049 Timely Filed was served on July 20, 2011 via electronic delivery to all of the parties receiving ECF notice in this bankruptcy case and via first-class mail, postage prepaid, on the following:

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*Office of the U.S. Trustee*

/s/ Lynn L. Tavenner

Lynn L. Tavenner (Va Bar No. 30083)

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

IN RE: )  
 )  
CIRCUIT CITY STORES, INC., *et al.*, ) Case No. 08-35653 (KRH)  
 ) (Chapter 11)  
 ) Jointly Administered  
Debtors. )

**AFFIDAVIT OF JEFF MCDONALD IN SUPPORT OF LIQUIDATING TRUSTEE'S  
RESPONSE IN OPPOSITION TO STATE OF CALIFORNIA, STATE BOARD OF  
EQUALIZATION'S MOTION TO RECONSIDER**

STATE OF VIRGINIA )  
 ) ss:  
COUNTY OF HENRICO )

JEFF MCDONALD, being duly sworn, deposes and says:

1. I am currently the Tax Manager for the Circuit City Stores, Inc. Liquidating Trust (the "Trust"), and in that capacity I have personal knowledge of the facts set forth in this Affidavit. Prior to my employ with the Trust, I was employed by Circuit City Stores, Inc. for more than twenty years (Circuit City Stores, Inc. and its related debtors in the above-reference cases are collectively referred to herein as the "Debtors"). Prior to the bankruptcy, I was vice-president of tax and supervised all tax functions of the Debtors.

2. I make this Affidavit based on my personal knowledge and my review of the books, records, and documents prepared and maintained by the Debtors and the Trust in the ordinary course of their business. I have become familiar with the manner and method in which the Debtors and the Trust maintain their tax related books and records in their regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted. I certify that all of the exhibits attached to this Affidavit are



true and accurate copies of the original documents. I have personal knowledge that the facts stated in this Affidavit are true. I am authorized by the Trust to make this Affidavit.

3. Based on my review of the bankruptcy court filings, I am aware that the State of California, State Board of Equalization (the "BOE") filed the following claims against the Debtors on or before May 11, 2009, the bar date for a governmental entity to file a proof of claim:

(a) priority claim in the amount of \$36,033.68 against Circuit City Purchasing Company, LLC (Claim No. 12002);

(b) administrative claim in the amount of \$325,605.29 against Circuit City Stores, Inc. (Claim No. 13186);

(c) administrative claim in the amount of \$2,525,699.69 against Circuit City Stores West Coast, Inc. (Claim No. 13187) (Claim Nos. 12002, 13186 and 13187 shall hereinafter be referred to as the "Timely Filed Claims").

4. On May 15, 2009, BOE filed a priority claim four days after the bar date in the amount of \$2,846,666.34 for unpaid tax liability against Circuit City West Coast, Inc. (the "Disallowed Claim"). A copy of the Disallowed Claim is attached as Exhibit A.

5. During the period between November 1, 2008 and November 14, 2008, Scott Ash and Paula Rose of the Debtors' tax department, under my direction, provided the Debtors' special tax counsel, Pete Larsen of the law firm of Akerman Senterfitt, with data regarding the Debtors' historical sales and charge-offs so that counsel could prepare a spreadsheet calculating Circuit City Stores West Coast Inc.'s California sales tax deductions for bad debt losses on taxable sales for the period of April 1, 2005 through October 31, 2008 (the "Deductions"). Based on counsel's subsequent analysis, the Debtors claimed the Deductions on line 10a1 as

“Bad Debt Losses on Taxable Sales” of Circuit City Stores West Coast Inc.’s Q4 2008 State, Local and District Sales and Use Tax Return that was filed on or about January 10, 2009. A true and correct copy of the Q4 2008 return is attached as Exhibit B.

6. During the first quarter of 2009, the Debtors were under a general sales and use tax audit by the BOE for the period of July 1, 2005 through November 9, 2008. The Debtors’ tax team, under my supervision and led by Jeff Knopke, then the Sales Tax Supervisor of the Debtors, cooperated with the BOE auditors’ request for data and documentation during the audit period, including substantiation for Deductions. The audit included the review of the Q4 2008 return and the Deductions in particular.

7. After the conclusion of the formal audit, beginning in April, 2009, Jeff Knopke was the only employee of the Debtors that was authorized by me to speak to the BOE.

8. On or about April 24, 2009, the BOE sent Circuit City Stores West Coast, Inc. a letter enclosing its Report of Field Audit and Notice of Determination (the “Assessment”). The notice indicated a tax liability owing by the Debtors in the amount of \$2,811,230.23. The tax assessment consists of \$2,537,420.57 relating to the Deductions, \$240,779.66 relating to a sales tax assessment for bad debts claimed relating to returned checks and fraud losses (“Bad Check/Fraud Deductions”), and \$33,030.00 relating to the tax exempt portion of the audit based on the error factor from the prior audit. In the Assessment, the auditor noted that “due to the bar date, we are unable to grant the taxpayer additional time to document the bad debts claims” and “the taxpayer does not agree with the audit findings.” A true and correct copy of the April 24, 2009 letter from the BOE and the relevant portions of the Report of Field Audit and Notice of Determination are attached as Exhibit C.

9. The underlying basis for the BOE's Disallowed Claim filed on May 15, 2009 is the same for the amounts assessed in the Assessment, plus an additional \$12,908 that the BOE separately assessed the Debtors for hazardous substances tax for the period of January 1, 2008 through December 31, 2008. Based on our limited research, I believe the \$12,908 assessment is without merit.

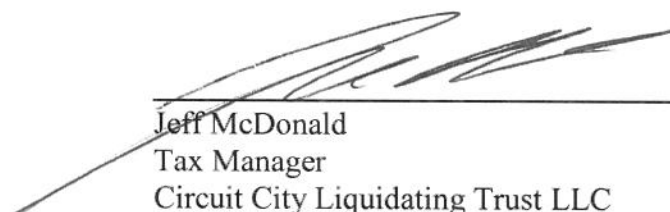
10. After the conclusion of the formal audit, the Debtors and the BOE continued to communicate regarding audit issues, particularly the Deductions and to a lesser extent, the Bad Check/Fraud Deductions. During the course of the communications from April 2009 through February 2010, at my direction, Jeff Knopke communicated with the BOE auditor Zoila Saquicela regarding the Deductions and the Bad Check/Fraud Deductions. During the course of those communications, on October 1, 2009, Mr. Knopke provided further explanation and a spreadsheet calculating the Deductions in response to a request for additional documentation, and explained to Ms. Saquicela that the Bad Check/Fraud Deductions that were taken during the course of the audit related to returned checks and fraud losses and were validly deducted.

11. On February 2, 2010, Jeff Knopke and Maria Carantzas of the Akerman firm had a telephone conference with BOE auditor Zoila Saquicela. From that date forward, the Debtors relied on the Akerman firm to correspond with the BOE auditors with regards to the BOE claims and the Deductions in particular.

12. I am not aware of and have not authorized any discussions by the Debtors concerning the prospect of consensual allowance of the Disallowed Claim or treatment of the Disallowed Claims as timely filed with anyone at the BOE. I am not aware of and have not authorized any communication with the BOE to stay the time period in which the BOE would be

required to reconsider the Order Sustaining Debtors' Sixty-Eighth Omnibus Objection To Claims  
(Disallowance Of Certain Late Claims).

**FURTHER AFFIANT SAYETH NAUGHT.**

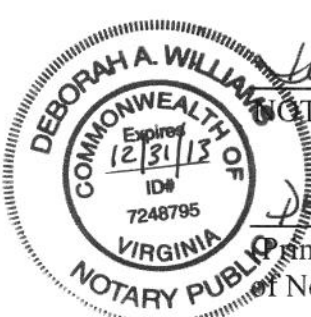
  
\_\_\_\_\_  
Jeff McDonald  
Tax Manager  
Circuit City Liquidating Trust LLC  
P.O. Box 5695  
Glen Allen, VA 23058

Phone: (804) 360-4135  
Fax: (804) 360-4289

STATE OF VIRGINIA     )  
                                      ) ss:  
COUNTY OF HENRICO    )

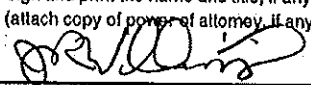
The foregoing instrument was sworn to and subscribed before me this 28<sup>th</sup> day of June,  
2011 by Jeff McDonald, who is:

- ☒ personally known to me; or
- ☐ produced a driver's license issued by the \_\_\_\_\_ Department of  
Highway Safety and Motor Vehicles as identification; or
- ☐ produced the following identification: \_\_\_\_\_

  
\_\_\_\_\_  
Deborah A. Williams  
Notary Public, State of Virginia  
\_\_\_\_\_  
Deborah A. Williams  
(Print, Type or Stamp Commissioned Name  
of Notary Public)

FORM B10 (Official Form 10) (12/03)

#13049

<b>U. S. BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA (RICHMOND)</b>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>CIRCUIT CITY STORES WEST COAST, INC.</b>		Case Number <b>08-35654</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>STATE BOARD OF EQUALIZATION</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	RICHMOND DIVISION  <div style="border: 1px solid black; padding: 5px; display: inline-block;">MAY 15 2009</div>  CLERK U.S. BANKRUPTCY COURT
Name and address where notices should be sent: <b>STATE BOARD OF EQUALIZATION SPECIAL PROCEDURES SECTION, MIC:55 PO BOX 942879 SACRAMENTO CA 94279-0055</b>		
Telephone: (916) 445-1122 FAX: (916) 327-0615		THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor: <b>SR OHB 99-487429; EF EF 42-077383</b>		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: <input type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other (specify) _____ <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date(s) debt incurred:</b> (AS SHOWN ON DATA SUMMARY ATTACHMENT)		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) _____ (secured) <b>2,846,666.34</b> (priority) <b>2,846,666.34</b> (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <b>2,846,666.34</b> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>6. Unsecured Nonpriority Claim</b> \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  <div style="text-align: center; font-size: 1.2em;">RECEIVED</div> <div style="text-align: center;">MAY 20 2009</div> <div style="text-align: center;">KURTZMAN CARSON CONSULTANTS</div>
Date <b>APRIL 28, 2009</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>State Board of Equalization, by</b>  <b>J. R. WILLIAMS, Authorized Representative</b>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

SH

- ☒ Date Stamped Copy Returned
- ☐ No self addressed stamped envelope
- ☐ No copy to return

EXHIBIT

A



**DATA SUMMARY ATTACHMENT FOR PROOF OF CLAIM OF STATE BOARD OF EQUALIZATION**

Debtor CIRCUIT CITY STORES WEST COAST, INC.	Case Number 08-35654	Claim Dated APRIL 28, 2009
Account Number SR OHB 99-487429; EF EF 42-077383	Petition Date 11/10/08	Chapter 11

**SUMMARY OF LIABILITY STATEMENT**

CLAIM CLASS	TAX PROGRAM OR REASON	DEBT PERIOD	TAX	INTEREST (calculated to petition or conversion date)	PENALTY	TOTAL
P	1	7/1/05 - 11/9/08	2,811,230.23	22,528.11		2,833,758.34
P	2	1/1/08 - 12/31/08	12,908.00			12,908.00
		-				
		-				
		-				
		-				
		-				
		-				
		-				
		-				
TOTALS			2,824,138.23	22,528.11		2,846,666.34

**LEGEND**

**CLAIM CLASS**

S - Secured  
P - Unsecured Priority - 11 USC 507(a)(8)  
G - Unsecured NON priority (General)  
GAP - "Gap" Claim - 11 USC 507(a)(2)  
1305 - 11USC 1305

**TAX PROGRAM OR REASON**

1. SALES AND USE TAX  
2. HAZARDOUS SUBSTANCES TAX  
3.  
4.  
5.  
6.

**SUMMARY OF TAX LIENS**

LIEN CERTIFICATE	DATE RECORDED	COUNTY OR RECORDING AUTHORITY	RECORDING INFORMATION (Document/Instrument #, or Book/Page)	AMOUNT
BE				

The foregoing liens were recorded pursuant to Section 6757 of the California Revenue and Taxation Code and to the extent there is any real or personal property to which the liens created by such recording attach, the amount of the claim in said certificates constitutes a secured claim.

**SUPPLEMENTAL CLAIM PURSUANT TO USC 11 § 726(a)(4) and (5)**

In addition to the claim to which this page is attached, the Board of Equalization asserts the following supplemental Chapter 7 claim, pursuant to the noted code sections:

USC 11 § 726(a)(4)	\$	0.00
USC 11 § 726(a)(5)		<u>0.00</u>
Total Supplemental Claim	\$	0.00

BOE-101A (FRONT) REV. 10/2/06-08

P O BOX 188268  
SACRAMENTO, CA 95818-0268  
(916) 227-6600

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

STATE, LOCAL and DISTRICT SALES and USE TAX RETURN

DUE ON OR BEFORE		FEB 2, 2009 FOR OCT THROUGH DEC 2008		2408	
[ FOID 40363052 ]		YOUR ACCOUNT NO		7	
SR Z OHB		99487429			

BOARD USE ONLY		
RA-TT	LUC	REG
RA-BIR	AACS	RET
EFF		

SC2 EFT  
BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO CA 94279-8041

680 S LEMON AVE, WALNUT, CA  
CIRCUIT CITY STORES WEST COAST INC  
9950 MAYLAND DR  
RICHMOND VA 23233-1463

E-FILE INFORMATION AND RETURN INSTRUCTIONS (BOE-401-INST) ARE AVAILABLE AT WWW.BOE.CA.GOV OR  
BY CALLING 800-400-7115. E-FILE IS FASTER, EASIER, AND A SECURE WAY TO FILE YOUR RETURN.

BOE  
USE

1	TOTAL (gross) SALES	1	\$ 288,265,120.00
2	PURCHASES SUBJECT TO USE TAX	2	1,015,087.00
3	TOTAL (add lines 1 and 2)		289,280,207.00
IF YOU HAVE DEDUCTIONS, FILL OUT LINES 4-11 ON THE BACK PAGE OF THIS RETURN IF NO DEDUCTIONS, ENTER "0" ON LINE 11 AND PROCEED TO LINE 12.			
11	TOTAL NONTAXABLE TRANSACTIONS REPORTED (enter total deductions from line 11 on the back)	11	32,996,176.00
12	TRANSACTIONS SUBJECT TO STATE TAX (subtract line 11 from line 3)	12	256,284,031.00
12 a	IF YOU ARE REQUIRED TO COMPLETE BOE-531-T, SCHEDULE T, enter amount from line 12 column C	12a	.00
13	STATE TAX 6% (multiply line 12 by .06 OR enter line 13 column D from BOE-531-T, Schedule T)		15,377,042.00
14 a	TRANSACTIONS SUBJECT TO COUNTY TAX (add amount in box 61 (back) and line 12 above)		256,284,031.00
b	COUNTY TAX 1/4% (multiply line 14a by .0025)		640,710.00
15	LOCAL TAX ADJUSTMENTS FOR AIRCRAFT COMMON CARRIERS ONLY (see line 15 instructions)	15	.00
16	TRANSACTIONS SUBJECT TO LOCAL TAX (add or subtract line 15 to/from line 14a)		256,284,031.00
17	COMBINED STATE AND LOCAL TAX 1% (multiply line 16 by .01) (additional schedules may apply - see line 17 instructions)		2,562,844.00
18	DISTRICT TAX (from Schedule A1, TOTAL DISTRICT TAX) YOU MUST COMPLETE BOE-531-A1, SCHEDULE A1, if you are engaged in business in a transactions and use tax district	18	1,878,775.00
19	TOTAL STATE, COUNTY, LOCAL AND DISTRICT TAX (add lines 13, 14b, 17, and 18)	19	20,459,371.00
20	SALES OR USE TAX PAID TO OTHER STATES (Enter the amount of tax paid for merchandise purchased out of state for use in California. The purchase price must be included in line 2 above.)	20	.00
21	NET TAX (subtract line 20 from line 19)		20,459,371.00
22	LESS TAX PREPAYMENTS	22	8,391,652.00
1st prepayment (Tax only) \$ 2,318,567.00 + 2nd prepayment (Tax only) \$ 6,073,085.00 = Total Prepayment			
23	REMAINING TAX (subtract line 22 from line 21)		12,067,719.00
24	PENALTY of 10% (.10) is due if your tax payment is made, or your return is filed after the due date shown above (see line 24 instructions)	PENALTY 24	.00
25	INTEREST: One month's interest is due on tax for each month or fraction of a month that payment is delayed after the due date. The adjusted monthly interest rate is 0.667%	INTEREST 25	.00
26	TOTAL AMOUNT DUE AND PAYABLE (add lines 23, 24, and 25)	26	\$ 12,067,719.00

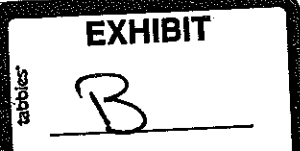
IF YOU ARE NOT AN EFT FILER AND PAID BY CREDIT CARD AS DESCRIBED ON PAGE 1 OF THE INSTRUCTIONS, CHECK HERE [ ]

I hereby certify that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct and complete return

YOUR SIGNATURE AND TITLE	TAX MANAGER	TELEPHONE NUMBER	DATE
		(804) 486-4000	01/10/2009
PRINT NAME AND TITLE			
PAID PREPARER'S USE ONLY	PAID PREPARER'S NAME	PREPARER'S TELEPHONE NUMBER	
		( )	

SC2

EFT



in records PRE 4,576,338  
POST 15,883,033

1234 100-A-11-00000000 102 (6/05)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

STATE, LOCAL and DISTRICT SALES and USE TAX RETURN

BOOK NO. 100-A-11-00000000	RECORDING PERIOD
SR 2 OHB 99487429	FEB 2, 2009 FOR OCT THROUGH DEC 2008

SECTION A. Full Deductions/Exemptions Schedule

	BOE USE	
4 SALES TO OTHER RETAILERS FOR PURPOSES OF RESALE	50	\$ 1,196,207.00
5 NONTAXABLE SALES OF FOOD PRODUCTS	51	00
6 NONTAXABLE LABOR (repair and installation)	52	00
7 SALES TO THE UNITED STATES GOVERNMENT	53	00
8 SALES IN INTERSTATE OR FOREIGN COMMERCE	54	00
9 SALES TAX (if any) INCLUDED ON LINE 1 ON THE FRONT OF THE RETURN	55	00
10 a 1 BAD DEBT LOSSES ON TAXABLE SALES	56	31,799,969.00
2 BAD DEBT LENDER LOSSES	62	00
b COST OF TAX-PAID PURCHASES RESOLD PRIOR TO USE	57	00
c RETURNED TAXABLE MERCHANDISE	58	00
d CASH DISCOUNTS ON TAXABLE SALES	59	00
TOTAL FULL DEDUCTIONS/EXEMPTIONS (add lines 4 thru 10d)		\$ 32,996,176.00

SECTION B. Partial Deductions/Exemptions Schedule

10 e IF YOU ARE REPORTING ANY TRANSACTIONS THAT OCCURRED PRIOR TO 7-1-04, YOU MUST COMPLETE THE PARTIAL STATE TAX EXEMPTION WORKSHEET, PAGE 3 OF BOE-531-T, SCHEDULE T, BEFORE YOU CLAIM ANY OF THESE DEDUCTIONS.		
1 AMOUNT SUBJECT TO THE MANUFACTURER'S EQUIPMENT EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e1 (discontinued 12-31-03).	63	\$ 00
2 AMOUNT SUBJECT TO THE TELEPRODUCTION EQUIPMENT EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e2	64	00
3 AMOUNT SUBJECT TO FARM EQUIPMENT EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e3	65	00
4 AMOUNT SUBJECT TO THE DIESEL FUEL USED IN FARMING AND FOOD PROCESSING EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e4	66	00
5 AMOUNT SUBJECT TO THE TIMBER HARVESTING EQUIPMENT AND MACHINERY EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e5	67	00
6 AMOUNT SUBJECT TO THE RACEHORSE BREEDING STOCK EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e6	68	00
TOTAL PARTIAL STATE TAX EXEMPTIONS - If you are required to complete the Tax Adjustment and Partial State Tax Exemption Worksheet (BOE-531-T, Schedule T), enter the amount from page 3, column D, box 60. If you are not required to complete the Worksheet, enter the sum of boxes 10e1 through 6	60	00
STATE TAX EXEMPTION FACTOR - Only for use if Partial State Tax Exemption Worksheet is NOT required		8750
TOTAL ADJUSTED PARTIAL DEDUCTIONS/EXEMPTIONS - If you completed BOE-531-T, Schedule T, enter the amount from page 1, column D, box 61. If you did not complete Schedule T, multiply the amount in box 60 by the State Tax Exemption Factor shown above and enter the result in box 61	61	\$ 00

SECTION C. Other Full Deductions/Exemptions Schedule

10 1 OTHER (clearly explain)	90	\$ 00
11 TOTAL NONTAXABLE TRANSACTIONS (Add amounts for Sections A, B and C, then enter here and on the front page, line 11)		\$ 32,996,176.00



BOL-501-A2 (S1) REV 3/10/08

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form**

<b>DUE ON OR BEFORE</b>	<b>FEB 2, 2009</b>	<b>FOR OCT THROUGH DEC 2008</b>	<b>2408</b>
[ FOID 40363052 ]		SR 2 OHB	99487429 7

A1	Enter amount from line 16 on the front of your Sales and Use Tax Return	\$	256,284,031.00
A2/A3	ENTER sales delivered to any location not in a district tax area	000	17,059,836.00
A4	SUBTRACT line A2/A3 from line A1 (Allocate this amount to the correct district tax areas in column A5)	\$	239,224,195.00

PLEASE READ THE INSTRUCTIONS ON PAGE 5 BEFORE COMPLETING THIS SCHEDULE

DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
ALAMEDA CO. 087	9,336,110.81		9,336,110.81	.016	\$ 140,042.00
COLUSA CO.					
City of Williams (Eff. 4-1-07) 139	789.94		789.94	.005	4.00
CONTRA COSTA CO. 025	3,299,321.54		3,299,321.54	.01	32,993.00
City of Richmond 096	1,565,048.23		1,565,048.23	.015	23,476.00
City of Pinole (Eff. 4-1-07) 141	5,092.34		5,092.34	.015	76.00
City of El Cerrito (Eff. 7-1-08) 176	9,193.03		9,193.03	.015	138.00
EL DORADO CO.					
City of Placerville 070	3,145.33		3,145.33	.0025	8.00
City of So. Lake Tahoe 097	-25.03		-25.03	.005	0.00
FRESNO CO. 099	5,099,213.84		5,099,213.84	.00725	36,969.00
City of Clovis (Expired 9-30-08) 100	Discontinued			.01025	0.00
City of Selma (Eff. 4-1-08) 169	4,385.01		4,385.01	.01225	54.00
City of Reedley (Eff. 7-1-08) 177	8,169.56		8,169.56	.01225	100.00
City of Sanger (Eff. 7-1-08) 179	3,685.39		3,685.39	.01475	54.00
HUMBOLDT CO.					
City of Trinidad 092				.01	0.00
IMPERIAL CO. 029	1,173.81		1,173.81	.005	6.00
City of Calexico (Expired 3-31-06) 046	Discontinued			.01	0.00
INYO CO. 014	120.00		120.00	.005	1.00
KERN COUNTY					
City of Delano (Eff. 4-1-08) 170	7,954.55		7,954.55	.01	80.00
LAKE CO.					
City of Clearlake 058	34.97		34.97	.005	0.00
City of Lakeport 101	300.00		300.00	.005	2.00
LOS ANGELES CO. 036	70,921,750.15		70,921,750.15	.01	709,218.00
City of Avalon 078	869.94		869.94	.015	13.00
City of Inglewood (Eff. 4-1-07) 143	29,234.63		29,234.63	.015	439.00
City of South Gate (Eff. 10-1-08) 182	4,475.89		4,475.89	.02	90.00

SUBTOTAL A11a (Add amounts in column A10 on this page. Enter the total here and on line A11a below)	\$ 943,763.00
---	---------------

Continued on page 2

A11a	SUBTOTAL DISTRICT TAX (Page 1, enter the total from line A11a above)	\$ 943,763.00
A11b	SUBTOTAL DISTRICT TAX (Page 2, enter the total from line A11b on page 2)	318,515.00
A11c	SUBTOTAL DISTRICT TAX (Page 3, enter the total from line A11c on page 3)	564,157.00
A11d	SUBTOTAL DISTRICT TAX (Page 4, enter the total from line A11d on page 4)	52,340.00
A11	TOTAL DISTRICT TAX (Add lines A11a, A11b, A11c and A11d. Enter here and on line 18 on the front of your Sales and Use Tax Return)	\$ 1,878,775.00

001-001-001-001-001-001

SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form

ACCOUNT NUMBER	REPORTING PERIOD
SR Z OHB 99487429	FEB 2, 2009 FOR OCT THROUGH DEC 2008

DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
MADERA CO. (Eff 4-1-07) 144	25,567.23		25,567.23	.005	\$ 128.00
MADERA CO. (Expired 9-30-05) 034	Discontinued			.005	00
MARIN CO. 102	21,806.71		21,806.71	.005	109.00
City of San Rafael 126	1,125,749.75		1,125,749.75	.01	11,258.00
MARIPOSA CO. 103	7,234.06		7,234.06	.005	36.00
MENDOCINO CO.					
City of Willits 084	3,194.97		3,194.97	.005	16.00
City of Point Arena 085	269.94		269.94	.005	1.00
City of Fort Bragg 094	360.00		360.00	.005	2.00
City of Ukiah 122	7,501.42		7,501.42	.005	38.00
MERCED CO.					
City of Los Banos 104	4,348.65		4,348.65	.005	22.00
City of Merced 127	1,383,708.84		1,383,708.84	.006	6,919.00
MONO CO.					
City of Mammoth Lakes (Eff 10-1-08) 183				.005	00
MONTEREY CO.					
City of Sand City 105	2,182,636.35		2,182,636.35	.005	10,913.00
City of Salinas 128	2,609,968.12		2,609,968.12	.005	13,050.00
City of Del Rey Oaks (Eff. 4-1-07) 145				.01	.00
City of Seaside (Eff. 4-1-07) 180	1,902.55		1,902.55	.01	19.00
City of Pacific Grove (Eff. 10-1-08) 184	3,288.61		3,288.61	.01	33.00
NAPA CO. 065	3,879.48		3,879.48	.005	19.00
NEVADA CO. 067	6,365.02		6,365.02	.00125	8.00
Town of Truckee 069	-29.97		-29.97	.00625	00
City of Nevada City (Eff. 4-1-07) 147	91.05		91.05	.00625	1.00
ORANGE CO. 037	29,217,076.96		29,217,076.96	.005	146,085.00
City of Laguna Beach (Eff. 7-1-06) 135	47,659.27		47,659.27	.01	477.00
RIVERSIDE CO. 026	15,402,147.60		15,402,147.60	.005	77,011.00
SACRAMENTO CO. 023	10,471,631.84		10,471,631.84	.005	52,358.00
SAN BENITO CO.					
City of San Juan Bautista 106	1,235.00		1,235.00	.0075	9.00
City of Hollister (Eff. 4-1-08) 171	331.88		331.88	.01	3.00

SUBTOTAL A11b (Add amounts in column A10 on this page. Enter the total here and on line A11b on page 1 of Schedule A2)	\$ 318,515.00
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Continued on page 3

BOE 4-31-A7 (5.3) REV. 3 (10-05)

**SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form**

ACCOUNT NUMBER SR 2 OHB	99487429	REPORTING PERIOD FEB 2, 2009 FOR OCT THROUGH DEC 2008
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DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
SAN BERNARDINO CO. 031	8,958,453.18		8,958,453.18	.005	\$ 44,792.00
City of Montclair 108	2,298,036.42		2,298,036.42	.0075	17,235.00
City of San Bernardino (Eff. 4-1-07) 149	3,443,276.75		3,443,276.75	.0075	25,825.00
SAN DIEGO CO. 013	14,991,881.06		14,991,881.06	.005	74,959.00
City of El Cajon 110	41,005.45		41,005.45	.01	410.00
City of National City (Eff. 10-1-06) 137	3,314,966.28		3,314,966.28	.015	49,724.00
City of Vista (Eff. 4-1-07) 151	1,734,392.75		1,734,392.75	.01	17,344.00
SAN FRANCISCO CO. 052	3,271,495.40		3,271,495.40	.0125	40,894.00
SAN JOAQUIN CO. 038	30,875.87		30,875.87	.005	154.00
City of Stockton 112	2,631,434.90		2,631,434.90	.0075	19,736.00
City of Manteca (Eff. 4-1-07) 153	1,759,647.59		1,759,647.59	.01	17,596.00
SAN LUIS OBISPO CO.					
City of Arroyo Grande (Eff. 4-1-07) 154	12,287.10		12,287.10	.005	61.00
City of Grover Beach (Eff. 4-1-07) 155	2,698.06		2,698.06	.005	13.00
City of Morro Bay (Eff. 4-1-07) 156	5,040.65		5,040.65	.006	25.00
City of San Luis Obispo (Eff. 4-1-07) 157	2,395,801.86		2,395,801.86	.005	11,979.00
City of Pismo Beach (Eff. 10-1-08) 185	13,577.03		13,577.03	.005	68.00
SAN MATEO CO. 019	7,150,011.50		7,150,011.50	.01	71,500.00
SANTA BARBARA CO. 030	4,104,158.56		4,104,158.56	.005	20,521.00
SANTA CLARA CO. 124	12,536,500.48		12,536,500.48	.01	125,365.00
SANTA CLARA CO. (Expired 3-31-05) 064	Discontinued			.01	00
SANTA CRUZ CO. 062	3,392,527.87		3,392,527.87	.0075	25,444.00
City of Capitola 114	11,679.52		11,679.52	.01	117.00
City of Scotts Valley 130	10,254.59		10,254.59	.0125	128.00
City of Santa Cruz (Eff. 4-1-07) 159				.0125	00
City of Santa Cruz (Expired 3-31-07) 090	Discontinued			.01	00
City of Watsonville (Eff. 4-1-07) 161	26,717.94		26,717.94	.01	267.00
SUBTOTAL A11c (Add amounts in column A10 on this page. Enter the total here and on line A11c on page 1 of Schedule A2)					\$ 564,157.00

Continued on page 4

BEH (CA-07/NA)REV. 4/10/06

**SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form**

ACCOUNT NUMBER		REPORTING PERIOD
SR 2 OHB	99487429	FEB 2, 2009 FOR OCT THROUGH DEC 2008

DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
SOLANO CO. 066	3,431,895.50		3,431,895.50	.00125	\$ 4,290.00
SONOMA CO. 116	81,057.67		81,057.67	.005	405.00
City of Sebastopol 118	1,562.38		1,562.38	.0075	12.00
City of Santa Rosa 120	3,191,102.77		3,191,102.77	.0075	23,933.00
STANISLAUS CO. 059	5,271,214.36		5,271,214.36	.00125	6,589.00
City of Ceres (Eff. 4-1-08) 173	2,999.49		2,999.49	.00625	19.00
TULARE CO. (Eff. 4-1-07) 162	11,082.85		11,082.85	.005	55.00
City of Visalia 163	2,219,195.97		2,219,195.97	.0075	16,644.00
City of Farmersville 164	3,858.30		3,858.30	.01	39.00
City of Dinuba 165	3,260.82		3,260.82	.01	41.00
City of Porterville 166	11,982.06		11,982.06	.01	120.00
City of Tulare 167	8,243.27		8,243.27	.01	82.00
TUOLUMNE CO.					
City of Sonora 093	1,966.45		1,966.45	.006	10.00
YOLO CO.					
City of West Sacramento 081	11,180.90		11,180.90	.006	56.00
City of Davis 088	6,597.55		6,597.55	.005	33.00
City of Woodland (Eff. 10-1-06) 138	2,304.77		2,304.77	.005	12.00
City of Woodland (Expired 6-30-06) 075	Discontinued			.005	00
SUBTOTAL A11d (Add amounts in column A10 on this page. Enter the total here and on line A11d on page 1 of Schedule A2)					\$ 52,340.00

POP-531 (FRONT) REV. 6 (1-07)

SCHEDULE B - DETAILED ALLOCATION BY COUNTY OF 1% COMBINED STATE AND UNIFORM LOCAL USE TAX

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

DUE ON OR BEFORE FEB 2, 2009 FOR OCT THROUGH DEC 2008 2408

[ FOLD 40363052 ] SR Z OHB YOUR ACCOUNT NO 99487429 7

CIRCUIT CITY STORES WEST COAST INC

PLEASE READ INSTRUCTIONS ON BACK BEFORE PREPARING THIS SCHEDULE  
Combined state and uniform local sales and use tax on retail sales of merchandise (not involving transportation) made at your permanent place of business in California or combined state and local tax on property purchased or used at this place of business should be entered on line B2 below the county schedule.

A COUNTY IN WHICH TAXABLE TRANSACTION OCCURRED	B CODE	C AMOUNT OF 1% COMBINED STATE AND LOCAL TAX	A COUNTY IN WHICH TAXABLE TRANSACTION OCCURRED	B CODE	C AMOUNT OF 1% COMBINED STATE AND LOCAL TAX
ALAMEDA	01	.00	PLACER	31	.00
ALPINE	02	.00	PLUMAS	32	.00
AMADOR	03	.00	RIVERSIDE	33	.00
BUTTE	04	.00	SACRAMENTO	34	.00
CALAVERAS	05	.00	SAN BENITO	35	.00
COLUSA	06	.00	SAN BERNARDINO	36	.00
CONTRA COSTA	07	.00	SAN DIEGO	37	.00
DEL NORTE	08	.00	SAN FRANCISCO	38	.00
EL DORADO	09	.00	SAN JOAQUIN	39	.00
FRESNO	10	.00	SAN LUIS OBISPO	40	.00
GLENN	11	.00	SAN MATEO	41	.00
HUMBOLDT	12	.00	SANTA BARBARA	42	.00
IMPERIAL	13	.00	SANTA CLARA	43	.00
INYO	14	.00	SANTA CRUZ	44	.00
KERN	15	.00	SHASTA	45	.00
KINGS	16	.00	SIERRA	46	.00
LAKE	17	.00	SISKIYOU	47	.00
LASSEN	18	.00	SOLANO	48	.00
LOS ANGELES	19	.00	SONOMA	49	.00
MADERA	20	.00	STANISLAUS	50	.00
MARIN	21	.00	SUTTER	51	.00
MARIPOSA	22	.00	TEHAMA	52	.00
MENDOCINO	23	.00	TRINITY	53	.00
MERCED	24	.00	TULARE	54	.00
MODOC	25	.00	TUOLUMNE	55	.00
MONO	26	.00	VENTURA	56	.00
MONTEREY	27	.00	YOLO	57	.00
NAPA	28	.00	YUBA	58	.00
NEVADA	29	.00			
ORANGE	30	.00			

B1 Total 1% combined state and local tax for all counties listed above . . . . . B1 \$ .00  
B2 Total 1% combined state and local tax on sales made and merchandise consumed at your permanent place of business in California (Do not include any tax allocated to the above counties) . . . . . B2 \$ 2,562,844.00  
B3 Total 1% combined state and local tax reported on Schedule F . . . . . B3 \$ .00  
B4 Total 1% combined state and local tax reported on Schedule I . . . . . B4 \$ .00  
B5 Total 1% combined state and local tax liability (add lines B1, B2, B3, and B4) This total tax must agree with line 17 on the return form . . . . . B5 \$ 2,562,844.00

BOND-DUSE ONLY  
Tax Area Code

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The Journal of Management Education 30(1)

SR 2 OHB

99487429

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680 S LEMON AVE, WALNUT, CA  
CIRCUIT CITY STORES  
CIRCUIT CITY STORES WEST COAST INC  
9950 MAYLAND DR  
RICHMOND VA

VA 23233 - 1463

- [illegible]

F1. 00

F2.	2,562,844.00
-----	--------------

BOARD USE ONLY  
Tax Area Code

F3. \$ 2,562,844 00

BE SURE TO ENCLOSE THIS SCHEDULE WITH YOUR SALES AND USE TAX RETURN - MAKE A COPY FOR YOUR RECORDS.

BOE-531 (REV. 11/01)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	RED- ON	IN USE	
5795 CHRISTIE AVE	EMERYVILLE	0011	01002	087		*	32,861.00
2480 WHIPPLE RD	HAYWARD	0127	01003	087		*	30,348.00
400 LONGFELLOW CT SUITE B	LIVERMORE	0114	01004	087		*	.00
43706 CHRISTY ST	FREMONT	0062	01009	080		*	17,577.00
7153 AMADOR PLAZA ROAD	DUBLIN	0007	01013	080		*	13,180.00
2041 WHITMAN AVE	CHICO	0075	04002	000		*	28,838.00
2030 DIAMOND BLVD	CONCORD	0006	07032	025		*	19,464.00
4300 DELTA GATEWAY BL	PITTSBURG	0113	07037	025		*	13,075.00
4100 KLOSE WAY	RICHMOND	0103	07038	025		*	15,704.00
5355 N BLACKSTONE AVE	FRESNO	0091	10060	072		*	51,426.00
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.							2,562,844.

OWNER'S NAME

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER

99487429

INDUSTRY

TAX CODE

SR Z

ZIP CODE

23233-1463

PERIOD

2408

PAGE

1 OF 10

EFT

BOE-531-B (07/20/11)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	AIR	ADD- ON	IN LEV	
4230 CALIFORNIA AVE	BAKERSFIELD	0041	15021	000			46,757.00
					*		
401 N 1ST STREET	BURBANK	0066	19007	036			32,478.00
					*		
120 EAST COMPTON BLVD	COMPTON	0039	19009	036			10,643.00
					*		
5660 SEPULVEDA BLVD	CULVER CITY	0080	19011	036			41,510.00
					*		
14600 OCEANGATE AVE	HAWTHORNE	0021	19016	036			41,878.00
					*		
745 WEST HUNTINGTON DR	MONROVIA	0144	19024	036			18,341.00
					*		
2415 VIA CAMPO AVE	MONTEBELLO	0042	19025	036			46,670.00
					*		
2735 S TOWNE AVE	POMONA	0074	19028	036			17,424.00
					*		
1251 4th ST	SANTA MONICA	0020	19033	036			29,262.00
					*		
901 SPRING ST	SIGNAL HILL	0134	19035	036			19,794.00
					*		

TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.

2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	2 OF 10	

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BOE-530 (1/10/01) REV. 7/0 (4-08)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

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nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1	SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
		CO	JUR	ADD- ON	IN- LIEU	
25415 CRENSHAW BLVD	TORRANCE	0051	19038	036		28,609.00
2851 EASTLAND CENTER DRIVE	WEST COVINA	0037	19040	036		32,647.00
4950 FACULTY DRIVE	LAKEWOOD	0025	19042	036		30,903.00
4400 SUNSET BOULEVARD	LOS ANGELES	0019	19050	036		38,656.00
6401 CONOGA AVE	WOODLAND HILLS	0036	19050	036		30,252.00
13630 VICTORY BOULEVARD	VAN NUYS	0038	19050	036		32,131.00
1839 S. LA CIENEGA BLVD	LOS ANGELES	0045	19050	036		27,292.00
1145 GAYLEY AVE	LOS ANGELES	0073	19050	036		.00
19330 PLUMMER ST	NORTHRIDGE	0108	19050	036		36,252.00
TOTAL FOR THIS TAX CODE *						164,583.00
2180 BELLFLOWER BLVD	LONG BEACH	0085	19060	036		22,831.00
1600 S AZUSA AVE	CITY OF INDUSTRY	0056	19062	036		17,119.00
680 SOUTH LEMON AVE	WALNUT	0067	19062	036		.00
505 SOUTH CHERYL LA	CITY OF INDUSTRY	0122	19062	036		2.00
TOTAL FOR THIS TAX CODE *						17,121.00
11758 E FIRESTONE BLVD	NORWALK	0044	19066	036		22,682.00
200 EAST BROADWAY ST	GLENDALE	0092	19070	036		28,274.00
39331 10TH STREET WEST	PALMDALE	0121	19094	036		39,236.00

TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.

2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	AP CODE	PERIOD	PAGE	EFT
99487429		SR 2	23233-1463	2408		3 OF 10

BOE530 1/060

BOE-531 (REV. 12-11-08)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	SR	ADD- ON	IN DEU	
39 NORTH ROSEMEAD BLVD 25610 N THE OLD RD	PASADENA	0023	19998	036		*	34,577.00
	VALENCIA	0104	19998	036			28,797.00
TOTAL FOR THIS		TAX CODE		*			63,374.00
330 BELLAM BLVD	SAN RAFAEL	0009	21028	126		*	11,448.00
3275 R STREET	MERCED	0079	24025	127		*	14,146.00
1910 North Davis Rd	Salinas	0055	27045	128		*	26,263.00
905 PLAYA AVE	SAND CITY	0089	27072	000	0019	*	21,961.00
835 E BIRCH ST	BREA	0145	30012	037		*	15,539.00
123 ORANGE FAIR MALL	FULLERTON	0082	30013	037		*	22,559.00
7881 EDINGER AVE	HUNTINGTON BEACH	0033	30014	037		*	41,623.00
1020 W IMPERIAL HWY	LA HABRA	0146	30016	037		*	20,551.00

TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.

2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	4 OF 10	

01/06/08 1:00

BOE-530 (FEBRUARY 1990) (2-00)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	AP	AD- ON	IN DEU	
1101 NEWPORT CENTER DR	NEWPORT BEACH	0060	30017	037		*	34,204.00
12325 Seal Beach Blvd	Seal Beach	0138	30021	037		*	19,449.00
8371 LA PALMA AVE	BUENA PARK	0022	30023	037		*	23,616.00
1407 W CHAPMAN AVE	ORANGE	0024	30030	037		*	19,230.00
13752 JAMBOREE RD	IRVINE	0084	30036	037		*	28,079.00
26542 TOWNE CENTRE DR	FOOTHILL RANCH	0136	30037	037		*	10,232.00
24001 EL TORO RD	LAGUNA HILLS	0099	30038	037		*	38,875.00
30491 AVENIDA DE LAS FLORES	RANCHO SANTA MARGARI	0125	30043	037		*	20,010.00
10271 FAIRWAY DR	ROSEVILLE	0123	31015	000		*	24,761.00
10255 MAGNOLIA AVE	RIVERSIDE	0043	33050	026		*	11,589.00

TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.

2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	5	OF 10

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BOE-531 (7/20/11) REV. 7/04-05

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2			AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	ADD- ON	IN LWD
72369 HIGHWAY 111	PALM DESERT	0101	33058	026		24,324.00
					*	
78-825 HWY 111	LA QUINTA	0126	33060	026		21,033.00
					*	
12530 DAY STREET	MORENO VALLEY	0014	33061	026		27,399.00
37610 EUCALYPTUS AVE	MORENO VALLEY	0148	33061	026		11,986.00
	TOTAL FOR THIS TAX CODE			*		39,385.00
40480 WINCHESTER RD	TEMECULA	0105	33062	026		34,785.00
					*	
24390 VILLAGE WALK PL	MURRIETA	0140	33065	026		13,543.00
					*	
6397 PATS RANCH RD	MIRA LOMA	0141	33998	026		9,668.00
					*	
205 SERPA DR	FOLSOM	0147	34003	023		24,822.00
					*	
7980 ARCADIA BLVD	CITRUS HEIGHTS	0016	34012	023		20,980.00
					*	
8211 LAGUNA BLVD	ELK GROVE	0015	34013	023		35,153.00
					*	
2121 ARDEN WAY	SACRAMENTO	0017	34998	023		24,415.00
					*	
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.						2,562,844.

OWNER'S NAME

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER	INDUSTRY	TAX CODE	2PCODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	6	OF 10

EO 656 A 1-000

BOE-530 (CONT.) REV. 70 (4-68)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO.	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	PR	ADD CH	IN LE	
16685 SIERRA LAKES PKWY	FONTANA	0137	36009	031			18,408.00
					*		
555 E HOSPITALITY LANE	SAN BERNARDINO	0102	36060	031			34,982.00
					*		
5150 NORTH PLAZA LANE	MONTCLAIR	0034	36071	031			24,027.00
					*		
12133 MALL BLVD	VICTORVILLE	0053	36072	031			32,166.00
					*		
12260 FOOTHILL BOULEVARD	RANCHO CUCAMONGA	0070	36075	031			38,191.00
					*		
1138 WEST VALLEY PARKWAY	ESCONDIDO	0052	37004	013			16,180.00
					*		
8820 GROSSMONT BLVD	LA MESA	0048	37005	013			27,330.00
					*		
1608 SWEETWATER RD	NATIONAL CITY	0047	37006	013			34,369.00
					*		
333 NORTH EL CAMINO REAL	ENCINITAS	0078	37018	013			26,690.00
					*		
3331 ROSECRANS STREET	SAN DIEGO	0049	37060	013			22,765.00
3998 CLAIREMONT MESA BLVD	SAN DIEGO	0050	37060	013			24,103.00
11710 CARMEL MOUNTAIN RD	SAN DIEGO	0061	37060	013			31,271.00
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-F, Schedule I. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule I, please enter this Schedule C total on line L2 of Schedule I.							2,562,844.

OWNER'S NAME:

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER	INDUSTRY	TAX CODE	AP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408		7 OF 10

BUSKHA 1-000

SEE 500 (COMBINED STATE AND LOCAL TAX)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2			AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	ADD- ON	IN DEB
TOTAL FOR THIS TAX CODE *						
1715 HACIENDA DRIVE	VISTA	0063	37095	013		78,139.00
					*	17,773.00
1200 VAN NESS AVE	SAN FRANCISCO	0013	38001	052		30,777.00
840 MARKET STREET	SAN FRANCISCO	0137	38001	052		.00
TOTAL FOR THIS TAX CODE *						30,777.00
2210 DANIELS ST	MANTECA	0132	39002	038		17,669.00
					*	
4994 N CLAREMONT AVE	STOCKTON	0012	39060	038		26,910.00
					*	
1531 Froom Ranch Way	San Luis Obispo	0135	40023	157		24,652.00
					*	
303 GELLERT BLVD	DALY CITY	0018	41015	019		34,565.00
					*	
1880 S GRANT STREET	SAN MATEO	0003	41021	019		25,173.00
					*	
1731 E Bayshore Rd	E PALO ALTO	0139	41030	019		13,577.00
					*	
1535 SOUTH BRADLEY RD	SANTA MARIA	0093	42002	030		13,529.00
					*	
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.						2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EPT
99487429		SR Z	23233-1463	2408	8	OF 10

PUBS&A 1.000

STATE OF CALIFORNIA (REV. 2004-08)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	ADD- ON	IN- LEU	
3761 STATE STREET	SANTA BARBARA	0030	42060	030			27,510.00
					*		
1007 COCHRAN RD	MORGAN HILL	0142	43004	124			14,773.00
					*		
111 E EL CAMINO REAL	SUNNEYVALE	0004	43007	064			22,938.00
					*		
5353 ALMADEN EXPWY	SAN JOSE	0001	43060	007			29,218.00
4080 W STEVENS CREEK BLVD	SAN JOSE	0002	43060	007			30,806.00
2217 QUIMBY RD	SAN JOSE	0064	43060	007			27,246.00
TOTAL FOR THIS TAX CODE				*			87,270.00
1664 COMMERCIAL WAY	SANTA CRUZ	0090	44998	062			34,393.00
					*		
1175 DANA DRIVE	REDDING	0083	45060	000			22,992.00
					*		
1560 GATEWAY BLVD	FAIRFIELD	0065	48083	066			14,375.00
					*		
130 NUT TREE PKWY	VACAVILLE	0149	48086	066			20,142.00
					*		
2805 SANTA ROSA AVE	SANTA ROSA	0008	49060	130			32,939.00
					*		
3401 DALE ROAD	MODESTO	0010	50012	059			31,180.00
TOTAL This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.							2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408		9 OF 10

DU05EA 1.000

BOE-530 (REV. 10/1/00)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1	SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
		00	00	00	00	
2821 COUNTRYSIDE DR TURLOCK	0133	50017	059	*		21,558.00
3930 S MOONEY BLVD VISALIA	0059	54056	163	*		22,748.00
421 W ESPLANADE DR OXNARD	0112	56013	000	*		30,812.00
600 WEST HILLCREST DR THOUSAND OAKS	0058	56017	000	*		14,374.00
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.						2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER

99487429

INDUSTRY

TAX CODE

SR Z

ZIP CODE

23233-1463

PERIOD

2408

PAGE

EFT

100F 10

BOE-530 (REV. 10/1/00)





TATF .IFORNIA  
BOARD OF EQUALIZATION  
ONE  
485 LEXINGTON AVENUE, SUITE 400  
NEW YORK, NY 10017  
212-697-4680 • FAX 212-697-5146  
www.boe.ca.gov

BETTY T. YEE  
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BILL LEONARD  
Second District, Ontario/Sacramento  
MICHELLE STEEL  
Third District, Rolling Hills Estates  
JUDY CHU, Ph.D.  
Fourth District, Los Angeles  
JOHN CHIANG  
State Controller  
RAMON J. HIRSIG  
Executive Director

April 24, 2009

Mr. Jeff Knopke  
Circuit City Stores West Coast, Inc.  
9950 Mayland Drive  
Richmond, VA 23233-1464

IN REPLY REFER TO:  
SR-Y-OHB-99-487429

Dear Mr. Knopke:

We are enclosing a copy of the *Report of Field Audit* resulting from our audit of your firm's records and accounts for the permit number referenced above. In a recent discussion, you indicated that you disagree with our audit recommendations. Your contention(s), along with a summary of our recommendations, are included in the report under "Discussion of Audit Findings." If you do not understand any portion of the audit findings, you may contact this office for clarification. If you have not received a copy of the audit working papers, including narrative comments, you may request one from this office.

We are forwarding the audit report to our headquarters office for processing and issuance of a *Notice of Determination* (i.e., billing). If this process results in a material change to the report you will be informed prior to billing. When you receive the *Notice*, you can appeal by filing a *Petition for Redetermination*, if you still believe there is an error in the audit report. The *Notice* includes instructions on how to file a petition.

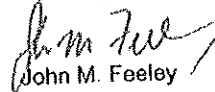
Interest will continue to accrue monthly on the amount of unpaid tax, and will be added to the current interest amount shown on the *Notice of Determination* "interest through" calculation date. Interest will stop accruing on any tax amounts paid. The payment of all or part of the tax liability shown on the *Notice* will in no way affect your right to protest portions with which you do not agree. If you would like to make a payment before receiving the *Notice*, please refer to the enclosed *Audit Payment Information* sheet and provide the requested information with your payment.

You have six (6) months from the date of payment to file a claim for refund on any disputed amounts. If we find that you are entitled to a refund, any overpayments of tax will be credited to outstanding liabilities on your account at the time the overpayment is approved. Any balance will be refunded with credit interest (on the overpaid tax only) at the rate established for refunds.

Please note, although we have applied commonly accepted auditing procedures during the course of your audit, the auditor may not have examined all of your transactions. There may still be transactions that you are not reporting correctly. If you have any questions as to the application of tax to a particular product or transaction, please contact your auditor in writing and he/she will provide you with a written response.

We appreciate your cooperation during the audit of your records.

Sincerely,

  
John M. Feeley

Area Administrator

Enclosures

Discussed with:

cc:

*When you have been unable to resolve a matter through the normal appeals process or for information on your rights, you may contact the Taxpayers' Rights Advocate Office toll-free at 888-324-2798.*

5/24/09



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Audit Payment Form

Account No: SR Y OHB 099-487429

Case Id: 429103

Firm Name: CIRCUIT CITY STORES  
Owner: CIRCUIT CITY STORES WST CST  
Owner Type: Corporation  
Business Address: 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464  
Mailing Address: 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464

Lead Auditor: ZOILA R SAQUIGELA  
Supervisor: GIULIO R DISALVO  
Board Office: New York Office  
Audit Report Date: March 31, 2009  
Business Code/SIC: 31  
Account Status: Closed-Out  
Tax Area Code: 5900099/0000

LIABILITY (OR CREDIT) DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

Examination Period: 7/01/05 to 11/09/08	Tax	Interest to 5/31/09	Penalty	Total
Total Disclosed by Examination	2,811,230.23	100,577.05		2,911,807.28
Balance as of 5/31/09	\$2,811,230.23	\$100,577.05	\$0.00	\$2,911,807.28

While this report is not a bill, payment is encouraged to prevent the accrual of additional interest.

Additional interest will accrue monthly on the unpaid Tax after 5/31/09.

**Total Amount as of 5/31/09 is \$2,911,807.28**

Payment Amount Included \_\_\_\_\_

Please Remit your Payment to:

State Board of Equalization  
P.O. Box 942879  
Sacramento, California  
94279-0013

Please include this page with your payment and make your check or money order payable to:  
State Board of Equalization.

Always write your account number ( **099-487429** ) on your check or money order.

4/24/09  
Page: 1



# State Board of Equalization - Sales and Use Tax Department

## REPORT OF FIELD AUDIT

**Account No:** SR Y OHB 099-487429  
**Firm Name:** CIRCUIT CITY STORES  
**Owner:** CIRCUIT CITY STORES WST CST  
**Owner Type:** Corporation  
**Business Address:** 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464  
**Mailing Address:** 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464

**Case Id:** 429103  
**Lead Auditor:** ZOILA R SAQUICELA  
**Supervisor:** GIULIO R DISALVO  
**Board Office:** New York Office  
**Audit Report Date:** March 31, 2009  
**Business Code/SIC:** 31  
**Account Status:** Closed-Out  
**Tax Area Code:** 590000070000

A Local Tax Allocation was completed  
A Legal Bankruptcy Case Exists

### LIABILITY (OR CREDIT) DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

Examination Period: 7/01/05 to 11/09/08	Tax	Interest to 5/31/09	Penalty	Total
<b>Total Disclosed by Examination</b>	2,811,230.23	100,577.05		2,911,807.28
<b>Balance as of 5/31/09**</b>	\$2,811,230.23	\$100,577.05	\$0.00	\$2,911,807.28

\*\*If multiple billings have occurred, the audit liability may not equal the sum of the billings

### TAXABLE MEASURE DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

	State, Local County and STII	Total District
1 Disallowed sales for resale based on prior audit percentages	406,473	751,718
2 Disallowed claimed bad debts - actual	33,919,948	66,609,301
	\$34,326,421	\$67,361,019



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-487429  
Case Id: 429103

DETAILED ANALYSIS OF TAXABLE MEASURE BY JURISDICTION

	<u>ACHC</u> <u>(District)</u>	<u>ACTI</u> <u>(District)</u>	<u>BARTA</u> <u>(District)</u>	<u>BARTC</u> <u>(District)</u>	<u>BARTS</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	15,775	15,775	15,775	10,384	5,260
2 Disallowed claimed bad debts - actual	1,316,432	1,316,432	1,316,432	866,689	438,754
	<u>\$1,332,207</u>	<u>\$1,332,207</u>	<u>\$1,332,207</u>	<u>\$877,073</u>	<u>\$444,014</u>
	<u>CCPS</u> <u>(District)</u>	<u>CCTA</u> <u>(District)</u>	<u>ECPS</u> <u>(District)</u>	<u>FCPL</u> <u>(District)</u>	<u>FCTA</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	8,954	10,384	34,851	8,954	8,954
2 Disallowed claimed bad debts - actual	747,190	866,689	2,908,397	747,190	747,190
	<u>\$756,144</u>	<u>\$877,073</u>	<u>\$2,943,248</u>	<u>\$756,144</u>	<u>\$756,144</u>
	<u>FCZA</u> <u>(District)</u>	<u>LACT</u> <u>(District)</u>	<u>LATC</u> <u>(District)</u>	<u>HRCO</u> <u>(District)</u>	<u>MTGR</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	8,954	112,589	112,589	1,284	24,608
2 Disallowed claimed bad debts - actual	747,190	9,395,556	9,395,556	133,952	2,053,513
	<u>\$756,144</u>	<u>\$9,508,145</u>	<u>\$9,508,145</u>	<u>\$135,236</u>	<u>\$2,078,121</u>
	<u>MTPS</u> <u>(District)</u>	<u>NCGT</u> <u>(District)</u>	<u>OCTA</u> <u>(District)</u>	<u>RCTC</u> <u>(District)</u>	<u>RFEL</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	2,787	23,192	42,411	24,582	2,541
2 Disallowed claimed bad debts - actual	442,739	2,900,036	3,539,139	2,051,276	264,922
	<u>\$445,526</u>	<u>\$2,923,228</u>	<u>\$3,581,550</u>	<u>\$2,075,858</u>	<u>\$267,463</u>
	<u>RMGT</u> <u>(District)</u>	<u>SAND</u> <u>(District)</u>	<u>SBAB</u> <u>(District)</u>	<u>SBER</u> <u>(District)</u>	<u>SBRN</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	10,384	5,545	8,230	24,608	12,864
2 Disallowed claimed bad debts - actual	866,689	462,735	686,640	2,053,513	2,043,562
	<u>\$877,073</u>	<u>\$468,280</u>	<u>\$694,870</u>	<u>\$2,078,121</u>	<u>\$2,056,426</u>
	<u>SCCT</u> <u>(District)</u>	<u>SCGF</u> <u>(District)</u>	<u>SCHY</u> <u>(District)</u>	<u>SCOS</u> <u>(District)</u>	<u>SCVI</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	17,995	3,608	7,425	4,881	14,387
2 Disallowed claimed bad debts - actual	1,501,636	1,500	619,413	407,310	1,500,136
	<u>\$1,519,631</u>	<u>\$5,108</u>	<u>\$626,838</u>	<u>\$412,191</u>	<u>\$1,514,523</u>



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-407429  
CaseId: 429103

DETAILED ANALYSIS OF TAXABLE MEASURE BY JURISDICTION

	<u>SDTC</u> <u>(District)</u>	<u>SFPF</u> <u>(District)</u>	<u>SFTA</u> <u>(District)</u>	<u>SJTA</u> <u>(District)</u>	<u>SLNS</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	34,851	5,260	5,260	5,332	4,434
2 Disallowed claimed bad debts - actual	2,908,397	438,754	438,754	444,894	462,273
	<u>\$2,943,248</u>	<u>\$444,014</u>	<u>\$444,014</u>	<u>\$450,226</u>	<u>\$466,707</u>
	<u>SL0G</u> <u>(District)</u>	<u>SLPL</u> <u>(District)</u>	<u>SMCT</u> <u>(District)</u>	<u>SHTA</u> <u>(District)</u>	<u>SNTA</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	688	4,100	10,383	10,383	4,881
2 Disallowed claimed bad debts - actual	109,402	342,049	866,385	866,385	407,310
	<u>\$110,090</u>	<u>\$346,149</u>	<u>\$876,768</u>	<u>\$876,768</u>	<u>\$412,191</u>
	<u>SPFG</u> <u>(District)</u>	<u>SRPS</u> <u>(District)</u>	<u>STAT</u> <u>(District)</u>	<u>STCL</u> <u>(District)</u>	<u>SZPL</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	5,332	4,881	14,268	7,023	7,425
2 Disallowed claimed bad debts - actual	444,894	407,310	1,190,759	585,867	619,413
	<u>\$450,226</u>	<u>\$412,191</u>	<u>\$1,205,027</u>	<u>\$592,890</u>	<u>\$626,838</u>
	<u>TAMC</u> <u>(District)</u>	<u>TCTA</u> <u>(District)</u>	<u>VPST</u> <u>(District)</u>	<u>VSTA</u> <u>(District)</u>	<u>Total District</u>
1 Disallowed sales for resale based on prior audit percentages	3,178	1,816	3,474	18,219	751,718
2 Disallowed claimed bad debts - actual	265,186	288,577	289,983	2,894,301	66,609,301
	<u>\$268,364</u>	<u>\$290,393</u>	<u>\$293,457</u>	<u>\$2,912,520</u>	<u>\$67,361,019</u>



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-487429  
Case Id: 429103

Reviewed By: \_\_\_\_\_

Date Reviewed: \_\_\_\_\_

Statute Date:

A Waiver is attached and the Waiver Period is: 07/01/05 to 06/30/08

First Expiring Period is: 07/01/05, and includes Tax of: \$3,024.69

Auditors who worked on the examination:

<u>OFFICE</u>	<u>AUDITOR ID</u>	<u>CLASS</u>	<u>AUDIT MADE BY</u>	<u>HOURS</u>
OHB	00000001778	3	ZOILA R SAQUICELA	124.00
Total Hours				124.00

The Reported Measure during the period of examination is \$4,266,722,286.

The Audit findings were discussed with: Tax Manager Jeff Knopke

Tel: (804) 486-2498

The taxpayer **does not agree** with the audit findings.

A copy of this Audit Report was furnished to the taxpayer along with a BOE-0079-B letter.

A credit is not involved but a claim for a refund was secured from the taxpayer and previously submitted to HQ.

A Tax Clearance is not required.

A Cigarette Indicia inspection revealed: None sold

The taxpayer is a Business with more than 50 Employees.

This business sells televisions, computers, or portable DVD players.

The directives provided to the taxpayer are: Pamphlets 17, 70 and 76 and Regulation 1642

General Comments

**Type of Business Organization**

Corporation. David McDonas - President, Michael Chalifoux - Vice President, Philip Dunn - Treasurer. Prior audit through 12/31/04. The taxpayer filed for bankruptcy on 11/10/08. The bar date is 5/11/09.

**Class of Business**

Retailer of consumer electronics, computers, appliances, etc.

**Books and Records**

Double entry system that is adequate for sales and use tax purposes. Records regarding bad debts claimed on the returns were not available for verification. Tax reimbursement is added to the selling price..

**Penalty**

None is recommended. The taxpayer reported over \$4 billion in taxable measure. We do not believe that the additional taxable measure was the result of negligence.

**Claim for Refund**

The taxpayer filed a claim for refund for bad debts not written off for the period 4/1/05 to 6/30/08. No dollar amount was stated in the claim. Due to the short time allowed by the bar date, the taxpayer was not able to supply any documentation in support of their claim. No refund is recommended.

The overpayment was not caused by carelessness. Credit interest is recommended.

**Tax Error on Returns**

The \$-2,682 tax error on the transcript for 2007 was due to a mathematical error on the

Page 1

4/24/09  
Page: 5



## State Board of Equalization - Sales and Use Tax Department

### REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-487429  
Case Id: 429103

#### **Tax Error on Returns (cont.)**

returns. The taxpayer supplied a claim for refund. The auditor recommends that the \$-2,682 overpayment be applied against this audit.

#### **Related Accounts**

Circuit City Purchasing (100-463241) was audited through 11/9/08.

Circuit City Stores (17-692815) was last audited through 3/31/01.

#### **Discussion with Taxpayer**

The audit was discussed with Jeff Knopke, Tax Manager.

#### **Taxpayer's Position**

The taxpayer believes that the amounts claimed as bad debts were valid deductions representing bad debts written off for bad checks and credit cards. He believes that the amounts claimed for 4/1/05 to 6/30/08 were actually understated.

#### **Auditor's Position**

The taxpayer has not provided documentation to support the \$33,919,948 in bad debts that were claimed on the returns. That includes the \$31,778,646 that was claimed for 10/1/08 to 11/9/08.

He has also not supplied documentation in support of the claim refund (bad debts).

Due to the bar date, we are unable to grant the taxpayer additional time to document the bad debts claimed.

#### **Supervisor Comments**

I agree with the auditor's recommendation to not add a penalty. - Giulio DiSalvo, STAI

I agree. - John M. Feeley, Area Administrator

#### **Franchise Tax Board**

Not applicable.

The fixed assets purchases made by their operational division without tax were not accrued and reported with their returns but were reported under account #SC OHB 100-463241, Circuit City Purchasing Co., LLC. This account was set up on 9/1/04 to keep control of all the fixed assets purchases for all new stores. There were no errors noted. The ex-tax fixed assets purchases made for all their existing stores were accrued and reported on line 2 of tax returns. There were no errors noted. *Circuit City Purchasing Co., LLC was audited by this auditor through 11/9/08.*

#### EXPENSE PURCHASES

A cursory review of several expense accounts was made. All expense purchases were made locally or the tax was accrued, and reported on returns.

Expense purchases made by the operational division for all new stores were reported under account # SC OHB 100-463241. This account was also audited through 11/9/08, *See above.*

#### BAD DEBTS

Taxpayer claimed bad debt deductions throughout the audit period. Per discussion with taxpayer the bad debts were related to sales made with bad credit cards and checks. Due to the fact that taxpayer was busy with their fiscal year end reporting's, and bankruptcy, taxpayer was not able to provide the back up work papers to support the offset bad debt deductions with recoveries in computing bad debt reported during the audit. Auditor was not able to verify the amounts for bad debts; therefore, the bad debt deductions were disallowed. Schedule 12B lists all amounts disallowed in the audit. Taxpayer does not agree with this area of the audit, and has indicated that he will file a petition for redetermination.

#### CLAIM FOR REFUND 2Q05 - 2Q08

Taxpayer filed a claim for refund on 7/28/08 in the amount of \$unstated for the period 4/1/05 through 6/30/08. However, taxpayer was not able to provide the documentation to support the claim, and has indicated that they no longer wish to pursue the claim.

#### TAX ERRORS / ADDITIONAL TAX ADJUSTMENTS

A math error was noted on the 2Q07 return which resulted in an overpayment of \$2,682. Taxpayer has filed a claim for refund for this amount, and auditor is recommending the amount be refunded to the taxpayer. This amount is being handled by the Audit Determination and Refund Section (see exhibit 3).

#### BROCHURES & PROMOTIONAL MATERIAL

Brochures & promotional material are distributed as inserts in newspapers. Tax is accrued and reported on amounts consumed in their stores. No further verification was done or deemed warranted.

#### LOCAL TAXES

Tax collected were properly billed and allocated to the county where the property was located. Additional liability included in the audit was also allocated to the county of use.

*City Sales were made and in state. Rotation was a percentage based internet sales are reported to the county of destination county/jurisdiction*



#### TRANSIT TAXES

Transit taxes were properly billed and reported to the county districts whenever it was applicable. The transit taxes were allocated on a % basis based on amounts reported through 9/30/08. The tax matrix was not use since the audit period was through the bankruptcy date of 11/9/08.

NOTE: Reviewer noted errors in the calculation of district tax percentages. As this is a Bankruptcy case Area Administrator wants the corrections to be made in the reaudit phase. See the attached go-back for corrections recommended by the reviewer. *RV*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

IN RE: )  
 )  
CIRCUIT CITY STORES, INC., *et al.*, ) Case No. 08-35653 (KRH)  
 ) (Chapter 11)  
 ) Jointly Administered  
Debtors. )

**AFFIDAVIT OF JEFF KNOPKE IN SUPPORT OF LIQUIDATING TRUSTEE'S  
RESPONSE IN OPPOSITION TO STATE OF CALIFORNIA, STATE BOARD OF  
EQUALIZATION'S MOTION TO RECONSIDER**

STATE OF VIRGINIA )  
 ) ss:  
COUNTY OF HENRICO )

JEFF KNOPKE, being duly sworn, deposes and says:

1. I am currently a Tax Analyst for the Circuit City Stores, Inc. Liquidating Trust (the "Trust"), and in that capacity, I have personal knowledge of the facts set forth in this Affidavit. Prior to my employ with the Trust, I was employed by Circuit City Stores, Inc. (Circuit City Stores, Inc. and its related debtors in the above-referenced cases are collectively referred to herein as the "Debtors"). Prior to the bankruptcy, I was Sales Tax Supervisor of the Debtors.

2. I make this Affidavit based on my personal knowledge and my review of the books, records, and documents prepared and maintained by the Debtors and the Trust in the ordinary course of their business. I have become familiar with the manner and method in which the Debtors and the Trust maintain their tax related books and records in their regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted. I certify that all of the exhibits attached to this Affidavit are

true and accurate copies of the original documents. I have personal knowledge that the facts stated in this Affidavit are true. I am authorized by the Trust to make this Affidavit.

3. Based on my review of the bankruptcy court filings, I am aware that the State of California, State Board of Equalization (the "BOE") filed the following claims against the Debtors on or before May 11, 2009, the bar date for a governmental entity to file a proof of claim:

(a) priority claim in the amount of \$36,033.68 against Circuit City Purchasing Company, LLC (Claim No. 12002);

(b) administrative claim in the amount of \$325,605.29 against Circuit City Stores, Inc. (Claim No. 13186);

(c) administrative claim in the amount of \$2,525,699.69 against Circuit City Stores West Coast, Inc. (Claim No. 13187) (Claim Nos. 12002, 13186 and 13187 shall hereinafter be referred to as the "Timely Filed Claims").

4. On May 15, 2009, BOE filed a priority claim four days after the bar date in the amount of \$2,846,666.34 for unpaid tax liability against Circuit City West Coast, Inc. (the "Disallowed Claim"). A copy of the Disallowed Claim is attached as Exhibit A.

5. During the period between November 1, 2008 and November 14, 2008, Scott Ash and Paula Rose of the Debtors' tax department provided to the Debtors' special tax counsel, Pete Larsen of the law firm of Akerman Senterfitt, with data regarding the Debtors' historical sales and charge-offs so that counsel could prepare a spreadsheet calculating Circuit City Stores West Coast Inc.'s California sales tax deductions for bad debt losses on taxable sales for the period of April 1, 2005 through October 31, 2008 (the "Deductions"). Based on counsel's subsequent analysis, the Debtors claimed the Deductions on line 10a1 as "Bad Debt Losses on Taxable

Sales” of Circuit City Stores West Coast Inc.’s Q4 2008 State, Local and District Sales and Use Tax Return that was filed on or about January 10, 2009. A true and correct copy of the Q4 2008 return is attached as Exhibit B.

6. During the first quarter of 2009, the Debtors were under a general sales and use tax audit by the BOE for the period of July 1, 2005 through November 9, 2008. I led the Debtors’ tax team in responding with the BOE auditors’ request for data and documentation during the audit period, including substantiation for Deductions. The audit included the review of the Q4 2008 return and the Deductions in particular.

7. After the conclusion of the formal audit, beginning in April, 2009, I was the only employee of the Debtors that was authorized by Jeff McDonald, then the vice-president of tax of the Debtors, to speak to the BOE.

8. On or about April 24, 2009, the BOE sent Circuit City Stores West Coast, Inc. a letter enclosing its Report of Field Audit and Notice of Determination (the “Assessment”). The notice indicated a tax liability owing by the Debtors in the amount of \$2,811,230.23. The tax assessment consists of \$2,537,420.57 relating to the Deductions, \$240,779.66 relating to a sales tax assessment for bad debts claimed relating to returned checks and fraud losses (“Bad Check/Fraud Deductions”), and \$33,030.00 relating to the tax exempt portion of the audit based on the error factor from the prior audit. In the Assessment, the auditor noted that “due to the bar date, we are unable to grant the taxpayer additional time to document the bad debts claims” and “the taxpayer does not agree with the audit findings.” A true and correct copy of the April 24, 2009 letter from the BOE and the relevant portions of the Report of Field Audit and Notice of Determination are attached as Exhibit C.

9. The underlying basis for the BOE's Disallowed Claim filed on May 15, 2009 are the same amounts assessed in the Assessment, plus an additional \$12,908 that the BOE separately assessed the Debtors for hazardous substances tax for the period of January 1, 2008 through December 31, 2008. Based on our limited research, I believe the \$12,908 assessment is without merit.


10. After the conclusion of the formal audit, the Debtors and the BOE continued to communicate regarding audit issues, particularly the Deductions and to a lesser extent, the Bad Check/Fraud Deductions. During the course of the communications from April 2009 through February 2010, I communicated with the BOE auditor Zoila Saquicela regarding the Deductions and the Bad Check/Fraud Deductions. During the course of those communications, on October 1, 2009, I provided further explanation and a spreadsheet calculating the Deductions in response to a request for additional documentation, and explained to Ms. Saquicela that the Bad Check/Fraud Deductions that were taken during the course of the audit related to returned checks and fraud losses and were validly deducted.

11. On February 2, 2010, Maria Carantzas of the Akerman firm and I had a telephone conference with BOE auditor Zoila Saquicela. From that date forward, the Debtors relied on the Akerman firm to communicate with the BOE auditors with regards to the BOE claims and the Deductions in particular.

12. In all of my communications with the BOE, I never had a single discussion about the prospect of a consensual allowance of the Disallowed Claim. Moreover, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to deem the Disallowed Claim as timely filed. Similarly, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to stay the time period in

which the BOE would be required to reconsider the Order Sustaining Debtors' Sixty-Eighth Omnibus Objection To Claims (Disallowance Of Certain Late Claims).

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Jeff Knopke  
Tax Analyst  
Circuit City Liquidating Trust LLC  
P.O. Box 5695  
Glen Allen, VA 23058

Phone: (804) 360-4135  
Fax: (804) 360-4289

STATE OF VIRGINIA       )  
  ) ss:  
COUNTY OF HENRICO    )

The foregoing instrument was sworn to and subscribed before me this 28<sup>th</sup> day of June, 2011 by Jeff Knopke, who is:

- ☒ personally known to me; or
- ☐ produced a driver's license issued by the \_\_\_\_\_ Department of Highway Safety and Motor Vehicles as identification; or
- ☐ produced the following identification: \_\_\_\_\_

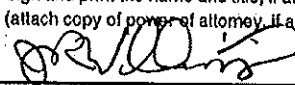


  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF VIRGINIA

DEBORAH A. WILLIAMS  
\_\_\_\_\_  
(Print, Type or Stamp Commissioned Name of Notary Public)

FORM B10 (Official Form 10) (12/03)

#13049

<b>U. S. BANKRUPTCY COURT EASTERN DISTRICT OF VIRGINIA (RICHMOND)</b>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>CIRCUIT CITY STORES WEST COAST, INC.</b>		Case Number <b>08-35654</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>STATE BOARD OF EQUALIZATION</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	RICHMOND DIVISION  <div style="border: 1px solid black; padding: 5px; display: inline-block;">MAY 15 2009</div>  CLERK U.S. BANKRUPTCY COURT
Name and address where notices should be sent: <b>STATE BOARD OF EQUALIZATION SPECIAL PROCEDURES SECTION, MIC:55 PO BOX 942879 SACRAMENTO CA 94279-0055</b>		
Telephone: (916) 445-1122 FAX: (916) 327-0615		THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor: <b>SR OHB 99-487429; EF EF 42-077383</b>		
Check here if this claim		<input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends _____
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other (specify) _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date(s) debt incurred:</b> (AS SHOWN ON DATA SUMMARY ATTACHMENT)		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) _____ (secured) <b>2,846,666.34</b> (priority) <b>2,846,666.34</b> (Total)		
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <b>2,846,666.34</b> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(2). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>6. Unsecured Nonpriority Claim</b> \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY  <div style="border: 1px solid black; padding: 10px; display: inline-block;"> <b>RECEIVED</b>  <b>MAY 20 2009</b>  <b>KURTZMAN CARSON CONSULTANTS</b> </div>
Date <b>APRIL 28, 2009</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>State Board of Equalization, by</b>  <b>J. R. WILLIAMS, Authorized Representative</b>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

SH

- ☒ Date Stamped Copy Returned
- ☐ No self addressed stamped envelope
- ☐ No copy to return

EXHIBIT

A



**DATA SUMMARY ATTACHMENT FOR PROOF OF CLAIM OF STATE BOARD OF EQUALIZATION**

Debtor CIRCUIT CITY STORES WEST COAST, INC.	Case Number 08-35654	Claim Dated APRIL 28, 2009
Account Number SR OHB 99-487429; EF EF 42-077383	Petition Date 11/10/08	Chapter 11

**SUMMARY OF LIABILITY STATEMENT**

CLAIM CLASS	TAX PROGRAM OR REASON	DEBT PERIOD	TAX	INTEREST (calculated to petition or conversion date)	PENALTY	TOTAL
P	1	7/1/05 - 11/9/08	2,811,230.23	22,528.11		2,833,758.34
P	2	1/1/08 - 12/31/08	12,908.00			12,908.00
		-				
		-				
		-				
		-				
		-				
		-				
		-				
		-				
TOTALS			2,824,138.23	22,528.11		2,846,666.34

**LEGEND**

**CLAIM CLASS**

S - Secured  
P - Unsecured Priority - 11 USC 507(a)(8)  
G - Unsecured NON priority (General)  
GAP - "Gap" Claim - 11 USC 507(a)(2)  
1305 - 11USC 1305

**TAX PROGRAM OR REASON**

1. SALES AND USE TAX  
2. HAZARDOUS SUBSTANCES TAX  
3.  
4.  
5.  
6.

**SUMMARY OF TAX LIENS**

LIEN CERTIFICATE	DATE RECORDED	COUNTY OR RECORDING AUTHORITY	RECORDING INFORMATION (Document/Instrument #, or Book/Page)	AMOUNT
BE				

The foregoing liens were recorded pursuant to Section 6757 of the California Revenue and Taxation Code and to the extent there is any real or personal property to which the liens created by such recording attach, the amount of the claim in said certificates constitutes a secured claim.

**SUPPLEMENTAL CLAIM PURSUANT TO USC 11 § 726(a)(4) and (5)**

In addition to the claim to which this page is attached, the Board of Equalization asserts the following supplemental Chapter 7 claim, pursuant to the noted code sections:

USC 11 § 726(a)(4)	\$	0.00
USC 11 § 726(a)(5)		<u>0.00</u>
Total Supplemental Claim	\$	0.00



BOE-101A (FRONT) REV. 10/2/06-08

P O BOX 188268  
SACRAMENTO, CA 95818-0268  
(916) 227-6600

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

STATE, LOCAL and DISTRICT SALES and USE TAX RETURN

DUE ON OR BEFORE		FEB 2, 2009 FOR OCT THROUGH DEC 2008		2408	
[ FOID 40363052 ]		YOUR ACCOUNT NO		7	
SR Z OHB		99487429			

BOARD USE ONLY		
RA-TT	LUC	REG
RA-BIR	AACS	RET
EFF		

SC2 EFT  
BOARD OF EQUALIZATION  
P.O. BOX 942879  
SACRAMENTO CA 94279-8041

680 S LEMON AVE, WALNUT, CA  
CIRCUIT CITY STORES WEST COAST INC  
9950 MAYLAND DR  
RICHMOND VA 23233-1463

E-FILE INFORMATION AND RETURN INSTRUCTIONS (BOE-401-INST) ARE AVAILABLE AT WWW.BOE.CA.GOV OR  
BY CALLING 800-400-7115. E-FILE IS FASTER, EASIER, AND A SECURE WAY TO FILE YOUR RETURN.

BOE  
USE

1	TOTAL (gross) SALES	1	\$ 288,265,120.00
2	PURCHASES SUBJECT TO USE TAX	2	1,015,087.00
3	TOTAL (add lines 1 and 2)		289,280,207.00
IF YOU HAVE DEDUCTIONS, FILL OUT LINES 4-11 ON THE BACK PAGE OF THIS RETURN IF NO DEDUCTIONS, ENTER "0" ON LINE 11 AND PROCEED TO LINE 12.			
11	TOTAL NONTAXABLE TRANSACTIONS REPORTED (enter total deductions from line 11 on the back)	11	32,996,176.00
12	TRANSACTIONS SUBJECT TO STATE TAX (subtract line 11 from line 3)	12	256,284,031.00
12 a	IF YOU ARE REQUIRED TO COMPLETE BOE-531-T, SCHEDULE T, enter amount from line 12 column C	12a	.00
13	STATE TAX 6% (multiply line 12 by .06 OR enter line 13 column D from BOE-531-T, Schedule T)		15,377,042.00
14 a	TRANSACTIONS SUBJECT TO COUNTY TAX (add amount in box 61 (back) and line 12 above)		256,284,031.00
b	COUNTY TAX 1/4% (multiply line 14a by .0025)		640,710.00
15	LOCAL TAX ADJUSTMENTS FOR AIRCRAFT COMMON CARRIERS ONLY (see line 15 instructions)	15	.00
16	TRANSACTIONS SUBJECT TO LOCAL TAX (add or subtract line 15 to/from line 14a)		256,284,031.00
17	COMBINED STATE AND LOCAL TAX 1% (multiply line 16 by .01) (additional schedules may apply - see line 17 instructions)		2,562,844.00
18	DISTRICT TAX (from Schedule A1, TOTAL DISTRICT TAX) YOU MUST COMPLETE BOE-531-A1, SCHEDULE A1, if you are engaged in business in a transactions and use tax district	18	1,878,775.00
19	TOTAL STATE, COUNTY, LOCAL AND DISTRICT TAX (add lines 13, 14b, 17, and 18)	19	20,459,371.00
20	SALES OR USE TAX PAID TO OTHER STATES (Enter the amount of tax paid for merchandise purchased out of state for use in California. The purchase price must be included in line 2 above.)	20	.00
21	NET TAX (subtract line 20 from line 19)		20,459,371.00
22	LESS TAX PREPAYMENTS	22	8,391,652.00
23	REMAINING TAX (subtract line 22 from line 21)		12,067,719.00
24	PENALTY of 10% (.10) is due if your tax payment is made, or your return is filed after the due date shown above (see line 24 instructions)	24	.00
25	INTEREST: One month's interest is due on tax for each month or fraction of a month that payment is delayed after the due date. The adjusted monthly interest rate is 0.667%	25	.00
26	TOTAL AMOUNT DUE AND PAYABLE (add lines 23, 24, and 25)	26	\$ 12,067,719.00

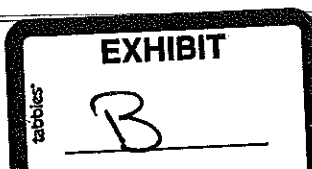
IF YOU ARE NOT AN EFT FILER AND PAID BY CREDIT CARD AS DESCRIBED ON PAGE 1 OF THE INSTRUCTIONS, CHECK HERE [ ]

I hereby certify that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief is a true, correct and complete return

YOUR SIGNATURE AND TITLE	TAX MANAGER	TELEPHONE NUMBER	DATE
		(804) 486-4000	01/10/2009
PRINT NAME AND TITLE			
PAID PREPARER'S USE ONLY	PAID PREPARER'S NAME	PREPARER'S TELEPHONE NUMBER	
		( )	

SC2

EFT



in records PRE 4,576,338  
POST 15,883,033

1234 100-A-BP-CR-11-11 102 (6/05)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

STATE, LOCAL and DISTRICT SALES and USE TAX RETURN

BOOK/QUARTER NO.	RECORDING PERIOD
SR 2 OHB 99487429	FEB 2, 2009 FOR OCT THROUGH DEC 2008

SECTION A. Full Deductions/Exemptions Schedule

	BOE USE	
4 SALES TO OTHER RETAILERS FOR PURPOSES OF RESALE	50	\$ 1,196,207.00
5 NONTAXABLE SALES OF FOOD PRODUCTS	51	00
6 NONTAXABLE LABOR (repair and installation)	52	00
7 SALES TO THE UNITED STATES GOVERNMENT	53	00
8 SALES IN INTERSTATE OR FOREIGN COMMERCE	54	00
9 SALES TAX (if any) INCLUDED ON LINE 1 ON THE FRONT OF THE RETURN	55	00
10 a 1 BAD DEBT LOSSES ON TAXABLE SALES	56	31,799,969.00
2 BAD DEBT LENDER LOSSES	62	00
b COST OF TAX-PAID PURCHASES RESOLD PRIOR TO USE	57	00
c RETURNED TAXABLE MERCHANDISE	58	00
d CASH DISCOUNTS ON TAXABLE SALES	59	00
TOTAL FULL DEDUCTIONS/EXEMPTIONS (add lines 4 thru 10d)		\$ 32,996,176.00

SECTION B. Partial Deductions/Exemptions Schedule

10 e IF YOU ARE REPORTING ANY TRANSACTIONS THAT OCCURRED PRIOR TO 7-1-04, YOU MUST COMPLETE THE PARTIAL STATE TAX EXEMPTION WORKSHEET, PAGE 3 OF BOE-531-T, SCHEDULE T, BEFORE YOU CLAIM ANY OF THESE DEDUCTIONS.		
1 AMOUNT SUBJECT TO THE MANUFACTURER'S EQUIPMENT EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e1 (discontinued 12-31-03).	63	\$ 00
2 AMOUNT SUBJECT TO THE TELEPRODUCTION EQUIPMENT EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e2	64	00
3 AMOUNT SUBJECT TO FARM EQUIPMENT EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e3	65	00
4 AMOUNT SUBJECT TO THE DIESEL FUEL USED IN FARMING AND FOOD PROCESSING EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e4	66	00
5 AMOUNT SUBJECT TO THE TIMBER HARVESTING EQUIPMENT AND MACHINERY EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e5	67	00
6 AMOUNT SUBJECT TO THE RACEHORSE BREEDING STOCK EXEMPTION - If you are completing Schedule T, enter the amount from Partial State Tax Exemption Worksheet, column D, line 10e6	68	00
TOTAL PARTIAL STATE TAX EXEMPTIONS - If you are required to complete the Tax Adjustment and Partial State Tax Exemption Worksheet (BOE-531-T, Schedule T), enter the amount from page 3, column D, box 60. If you are not required to complete the Worksheet, enter the sum of boxes 10e1 through 6	60	00
STATE TAX EXEMPTION FACTOR - Only for use if Partial State Tax Exemption Worksheet is NOT required		8750
TOTAL ADJUSTED PARTIAL DEDUCTIONS/EXEMPTIONS - If you completed BOE-531-T, Schedule T, enter the amount from page 1, column D, box 61. If you did not complete Schedule T, multiply the amount in box 60 by the State Tax Exemption Factor shown above and enter the result in box 61	61	\$ 00

SECTION C. Other Full Deductions/Exemptions Schedule

10 1 OTHER (clearly explain)	90	\$ 00
11 TOTAL NONTAXABLE TRANSACTIONS (Add amounts for Sections A, B and C, then enter here and on the front page, line 11)		\$ 32,996,176.00

BOL-501-A2 (S1) REV 3/10/08

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form**

<b>DUE ON OR BEFORE</b>	<b>FEB 2, 2009</b>	<b>FOR OCT THROUGH DEC 2008</b>	<b>2408</b>
[ FOID 40363052 ]		SR 2 OHB	99487429 7

A1	Enter amount from line 16 on the front of your Sales and Use Tax Return	\$	256,284,031.00
A2/A3	ENTER sales delivered to any location not in a district tax area 000	-	17,059,836.00
A4	SUBTRACT line A2/A3 from line A1 (Allocate this amount to the correct district tax areas in column A5)	\$	239,224,195.00

PLEASE READ THE INSTRUCTIONS ON PAGE 5 BEFORE COMPLETING THIS SCHEDULE

DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
ALAMEDA CO. 087	9,336,110.81		9,336,110.81	.016	\$ 140,042.00
COLUSA CO.					
City of Williams (Eff. 4-1-07) 139	789.94		789.94	.005	4.00
CONTRA COSTA CO. 025	3,299,321.54		3,299,321.54	.01	32,993.00
City of Richmond 096	1,565,048.23		1,565,048.23	.015	23,476.00
City of Pinole (Eff. 4-1-07) 141	5,092.34		5,092.34	.015	76.00
City of El Cerrito (Eff. 7-1-08) 176	9,193.03		9,193.03	.015	138.00
EL DORADO CO.					
City of Placerville 070	3,145.33		3,145.33	.0025	8.00
City of So. Lake Tahoe 097	-25.03		-25.03	.005	0.00
FRESNO CO. 099	5,099,213.84		5,099,213.84	.00725	36,969.00
City of Clovis (Expired 9-30-08) 100	Discontinued			.01025	0.00
City of Selma (Eff. 4-1-08) 169	4,385.01		4,385.01	.01225	54.00
City of Reedley (Eff. 7-1-08) 177	8,169.56		8,169.56	.01225	100.00
City of Sanger (Eff. 7-1-08) 179	3,685.39		3,685.39	.01475	54.00
HUMBOLDT CO.					
City of Trinidad 092				.01	0.00
IMPERIAL CO. 029	1,173.81		1,173.81	.005	6.00
City of Calexico (Expired 3-31-06) 046	Discontinued			.01	0.00
INYO CO. 014	120.00		120.00	.005	1.00
KERN COUNTY					
City of Delano (Eff. 4-1-08) 170	7,954.55		7,954.55	.01	80.00
LAKE CO.					
City of Clearlake 058	34.97		34.97	.005	0.00
City of Lakeport 101	300.00		300.00	.005	2.00
LOS ANGELES CO. 036	70,921,750.15		70,921,750.15	.01	709,218.00
City of Avalon 078	869.94		869.94	.015	13.00
City of Inglewood (Eff. 4-1-07) 143	29,234.63		29,234.63	.015	439.00
City of South Gate (Eff. 10-1-08) 182	4,475.89		4,475.89	.02	90.00

SUBTOTAL A11a (Add amounts in column A10 on this page. Enter the total here and on line A11a below.)	\$ 943,763.00
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Continued on page 2

A11a	SUBTOTAL DISTRICT TAX (Page 1, enter the total from line A11a above.)	\$ 943,763.00
A11b	SUBTOTAL DISTRICT TAX (Page 2, enter the total from line A11b on page 2)	318,515.00
A11c	SUBTOTAL DISTRICT TAX (Page 3, enter the total from line A11c on page 3)	564,157.00
A11d	SUBTOTAL DISTRICT TAX (Page 4, enter the total from line A11d on page 4)	52,340.00
A11	TOTAL DISTRICT TAX (Add lines A11a, A11b, A11c and A11d. Enter here and on line 18 on the front of your Sales and Use Tax Return.)	\$ 1,878,775.00

001-001-001-001-001-001

SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form

ACCOUNT NUMBER	REPORTING PERIOD
SR Z OHB 99487429	FEB 2, 2009 FOR OCT THROUGH DEC 2008

DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
MADERA CO. (Eff 4-1-07) 144	25,567.23		25,567.23	.005	\$ 128.00
MADERA CO. (Expired 9-30-05) 034	Discontinued			.005	00
MARIN CO. 102	21,806.71		21,806.71	.005	109.00
City of San Rafael 126	1,125,749.75		1,125,749.75	.01	11,258.00
MARIPOSA CO. 103	7,234.06		7,234.06	.005	36.00
MENDOCINO CO.					
City of Willits 084	3,194.97		3,194.97	.005	16.00
City of Point Arena 085	269.94		269.94	.005	1.00
City of Fort Bragg 094	360.00		360.00	.005	2.00
City of Ukiah 122	7,501.42		7,501.42	.005	38.00
MERCED CO.					
City of Los Banos 104	4,348.65		4,348.65	.005	22.00
City of Merced 127	1,383,708.84		1,383,708.84	.006	6,919.00
MONO CO.					
City of Mammoth Lakes (Eff 10-1-08) 183				.005	00
MONTEREY CO.					
City of Sand City 105	2,182,636.35		2,182,636.35	.005	10,913.00
City of Salinas 128	2,609,968.12		2,609,968.12	.005	13,050.00
City of Del Rey Oaks (Eff. 4-1-07) 145				.01	.00
City of Seaside (Eff. 4-1-07) 180	1,902.55		1,902.55	.01	19.00
City of Pacific Grove (Eff. 10-1-08) 184	3,288.61		3,288.61	.01	33.00
NAPA CO. 065	3,879.48		3,879.48	.005	19.00
NEVADA CO. 067	6,365.02		6,365.02	.00125	8.00
Town of Truckee 069	-29.97		-29.97	.00625	00
City of Nevada City (Eff. 4-1-07) 147	91.05		91.05	.00625	1.00
ORANGE CO. 037	29,217,076.96		29,217,076.96	.005	146,085.00
City of Laguna Beach (Eff. 7-1-06) 135	47,659.27		47,659.27	.01	477.00
RIVERSIDE CO. 026	15,402,147.60		15,402,147.60	.005	77,011.00
SACRAMENTO CO. 023	10,471,631.84		10,471,631.84	.005	52,358.00
SAN BENITO CO.					
City of San Juan Bautista 106	1,235.00		1,235.00	.0075	9.00
City of Hollister (Eff. 4-1-08) 171	331.88		331.88	.01	3.00

SUBTOTAL A11b (Add amounts in column A10 on this page. Enter the total here and on line A11b on page 1 of Schedule A2)	\$ 318,515.00
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Continued on page 3

BOE 4-31-A7 (5.3) REV. 3 (10-05)

**SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form**

ACCOUNT NUMBER <b>SR 2 OHB</b>	<b>99487429</b>	REPORTING PERIOD <b>FEB 2, 2009 FOR OCT THROUGH DEC 2008</b>
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DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
SAN BERNARDINO CO. 031	8,958,453.18		8,958,453.18	.005	\$ 44,792.00
City of Montclair 108	2,298,036.42		2,298,036.42	.0075	17,235.00
City of San Bernardino (Eff. 4-1-07) 149	3,443,276.75		3,443,276.75	.0075	25,825.00
SAN DIEGO CO. 013	14,991,881.06		14,991,881.06	.005	74,959.00
City of El Cajon 110	41,005.45		41,005.45	.01	410.00
City of National City (Eff. 10-1-06) 137	3,314,966.28		3,314,966.28	.015	49,724.00
City of Vista (Eff. 4-1-07) 151	1,734,392.75		1,734,392.75	.01	17,344.00
SAN FRANCISCO CO. 052	3,271,495.40		3,271,495.40	.0125	40,894.00
SAN JOAQUIN CO. 038	30,875.87		30,875.87	.005	154.00
City of Stockton 112	2,631,434.90		2,631,434.90	.0075	19,736.00
City of Manteca (Eff. 4-1-07) 153	1,759,647.59		1,759,647.59	.01	17,596.00
SAN LUIS OBISPO CO.					
City of Arroyo Grande (Eff. 4-1-07) 154	12,287.10		12,287.10	.005	61.00
City of Grover Beach (Eff. 4-1-07) 155	2,698.06		2,698.06	.005	13.00
City of Morro Bay (Eff. 4-1-07) 156	5,040.65		5,040.65	.006	25.00
City of San Luis Obispo (Eff. 4-1-07) 157	2,395,801.86		2,395,801.86	.005	11,979.00
City of Pismo Beach (Eff. 10-1-08) 185	13,577.03		13,577.03	.005	68.00
SAN MATEO CO. 019	7,150,011.50		7,150,011.50	.01	71,500.00
SANTA BARBARA CO. 030	4,104,158.56		4,104,158.56	.005	20,521.00
SANTA CLARA CO. 124	12,536,500.48		12,536,500.48	.01	125,365.00
SANTA CLARA CO. (Expired 3-31-06) 064	Discontinued			.01	00
SANTA CRUZ CO. 062	3,392,527.87		3,392,527.87	.0075	25,444.00
City of Capitola 114	11,679.52		11,679.52	.01	117.00
City of Scotts Valley 130	10,254.59		10,254.59	.0125	128.00
City of Santa Cruz (Eff. 4-1-07) 159				.0125	00
City of Santa Cruz (Expired 3-31-07) 090	Discontinued			.01	00
City of Watsonville (Eff. 4-1-07) 161	26,717.94		26,717.94	.01	267.00
SUBTOTAL A11c (Add amounts in column A10 on this page. Enter the total here and on line A11c on page 1 of Schedule A2)					\$ 564,157.00

Continued on page 4

BEH (CA-07/NA)REV. 4/10/06

**SCHEDULE A2 - COMPUTATION SCHEDULE FOR DISTRICT TAX - Long Form**

ACCOUNT NUMBER		REPORTING PERIOD
SR 2 OHB	99487429	FEB 2, 2009 FOR OCT THROUGH DEC 2008

DISTRICT TAX AREAS	A5 ALLOCATE LINE A4 TO CORRECT DISTRICT(S)	A6/A7 ADD (+) / DEDUCT (-) ADJUSTMENTS	A8 TAXABLE AMOUNT A5 plus/minus A6/A7	A9 TAX RATE	A10 DISTRICT TAX DUE Multiply A8 by A9
SOLANO CO. 066	3,431,895.50		3,431,895.50	.00125	\$ 4,290.00
SONOMA CO. 116	81,057.67		81,057.67	.005	405.00
City of Sebastopol 118	1,562.38		1,562.38	.0075	12.00
City of Santa Rosa 120	3,191,102.77		3,191,102.77	.0075	23,933.00
STANISLAUS CO. 059	5,271,214.36		5,271,214.36	.00125	6,589.00
City of Ceres (Eff. 4-1-08) 173	2,999.49		2,999.49	.00625	19.00
TULARE CO. (Eff. 4-1-07) 162	11,082.85		11,082.85	.005	55.00
City of Visalia 163	2,219,195.97		2,219,195.97	.0075	16,644.00
City of Farmersville 164	3,858.30		3,858.30	.01	39.00
City of Dinuba 165	3,260.82		3,260.82	.01	41.00
City of Porterville 166	11,982.06		11,982.06	.01	120.00
City of Tulare 167	8,243.27		8,243.27	.01	82.00
TUOLUMNE CO.					
City of Sonora 093	1,966.45		1,966.45	.006	10.00
YOLO CO.					
City of West Sacramento 081	11,180.90		11,180.90	.006	56.00
City of Davis 088	6,597.55		6,597.55	.005	33.00
City of Woodland (Eff. 10-1-06) 138	2,304.77		2,304.77	.005	12.00
City of Woodland (Expired 6-30-06) 075	Discontinued			.005	00
SUBTOTAL A11d (Add amounts in column A10 on this page. Enter the total here and on line A11d on page 1 of Schedule A2)					\$ 52,340.00

POP-331 (FRONT) REV. 6 (1-07)

SCHEDULE B - DETAILED ALLOCATION BY COUNTY OF 1% COMBINED STATE AND UNIFORM LOCAL USE TAX

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

DUE ON OR BEFORE FEB 2, 2009 FOR OCT THROUGH DEC 2008 2408

[ FOLD 40363052 ] SR Z OHB YOUR ACCOUNT NO 99487429 7

CIRCUIT CITY STORES WEST COAST INC

PLEASE READ INSTRUCTIONS ON BACK BEFORE PREPARING THIS SCHEDULE  
Combined state and uniform local sales and use tax on retail sales of merchandise (not involving transportation) made at your permanent place of business in California or combined state and local tax on property purchased or used at this place of business should be entered on line B2 below the county schedule.

A COUNTY IN WHICH TAXABLE TRANSACTION OCCURRED	B CODE	C AMOUNT OF 1% COMBINED STATE AND LOCAL TAX	A COUNTY IN WHICH TAXABLE TRANSACTION OCCURRED	B CODE	C AMOUNT OF 1% COMBINED STATE AND LOCAL TAX
ALAMEDA	01	.00	PLACER	31	.00
ALPINE	02	.00	PLUMAS	32	.00
AMADOR	03	.00	RIVERSIDE	33	.00
BUTTE	04	.00	SACRAMENTO	34	.00
CALAVERAS	05	.00	SAN BENITO	35	.00
COLUSA	06	.00	SAN BERNARDINO	36	.00
CONTRA COSTA	07	.00	SAN DIEGO	37	.00
DEL NORTE	08	.00	SAN FRANCISCO	38	.00
EL DORADO	09	.00	SAN JOAQUIN	39	.00
FRESNO	10	.00	SAN LUIS OBISPO	40	.00
GLENN	11	.00	SAN MATEO	41	.00
HUMBOLDT	12	.00	SANTA BARBARA	42	.00
IMPERIAL	13	.00	SANTA CLARA	43	.00
INYO	14	.00	SANTA CRUZ	44	.00
KERN	15	.00	SHASTA	45	.00
KINGS	16	.00	SIERRA	46	.00
LAKE	17	.00	SISKIYOU	47	.00
LASSEN	18	.00	SOLANO	48	.00
LOS ANGELES	19	.00	SONOMA	49	.00
MADERA	20	.00	STANISLAUS	50	.00
MARIN	21	.00	SUTTER	51	.00
MARIPOSA	22	.00	TEHAMA	52	.00
MENDOCINO	23	.00	TRINITY	53	.00
MERCED	24	.00	TULARE	54	.00
MODOC	25	.00	TUOLUMNE	55	.00
MONO	26	.00	VENTURA	56	.00
MONTEREY	27	.00	YOLO	57	.00
NAPA	28	.00	YUBA	58	.00
NEVADA	29	.00			
ORANGE	30	.00			

B1. Total 1% combined state and local tax for all counties listed above . . . . . B1 \$ .00  
B2. Total 1% combined state and local tax on sales made and merchandise consumed at your permanent place of business in California. (Do not include any tax allocated to the above counties) . . . . . B2 \$ 2,562,844.00  
B3. Total 1% combined state and local tax reported on Schedule F . . . . . B3 \$ .00  
B4. Total 1% combined state and local tax reported on Schedule I . . . . . B4 \$ .00  
B5. Total 1% combined state and local tax liability (add lines B1, B2, B3, and B4) This total tax must agree with line 17 on the return form . . . . . B5 \$ 2,562,844.00

BOND-DUSE ONLY  
Tax Area Code

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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680 S LEMON AVE, WALNUT, CA  
CIRCUIT CITY STORES  
CIRCUIT CITY STORES WEST COAST INC  
9950 MAYLAND DR  
RICHMOND VA

VA 23233 - 1463

1 Using the listing of cities and tax area codes for Schedule F, BOE-531-F 1, locate the tax area code for the city/unincorporated area for each location.  
2 Summarize the 1% combined state and local use tax due by tax area code.  
3 Enter the tax area code(s) and total 1% combined state and local use tax due for each city/unincorporated tax area code.

Fl	.00
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a) If you are required to file a Schedule B, enter the amount from line F1 above on line B3 of Schedule B.

b) If you are required to file a Schedule E, enter the amount from line F1 above on line E3 of Schedule E.

c) If you are not required to file Schedule B or E, continue to lines F2 & F3.

BOARD USE ONLY  
Tax Area Code

F2.	2,562,844.00
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F3. \$ 2,562,844 00

04/05/2019



BOE-531 (REV. 11/01)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	REC- ON	IN USE	
5795 CHRISTIE AVE	EMERYVILLE	0011	01002	087		*	32,861.00
2480 WHIPPLE RD	HAYWARD	0127	01003	087		*	30,348.00
400 LONGFELLOW CT SUITE B	LIVERMORE	0114	01004	087		*	.00
43706 CHRISTY ST	FREMONT	0062	01009	080		*	17,577.00
7153 AMADOR PLAZA ROAD	DUBLIN	0007	01013	080		*	13,180.00
2041 WHITMAN AVE	CHICO	0075	04002	000		*	28,838.00
2030 DIAMOND BLVD	CONCORD	0006	07032	025		*	19,464.00
4300 DELTA GATEWAY BL	PITTSBURG	0113	07037	025		*	13,075.00
4100 KLOSE WAY	RICHMOND	0103	07038	025		*	15,704.00
5355 N BLACKSTONE AVE	FRESNO	0091	10060	072		*	51,426.00
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.							2,562,844.

OWNER'S NAME

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER

99487429

INDUSTRY

TAX CODE

SR Z

ZIP CODE

23233-1463

PERIOD

2408

PAGE

1 OF 10

EFT

BOE-530-B (01/01/07) (04/06)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2			AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	AIR	ADD- CN	IN LEV
4230 CALIFORNIA AVE	BAKERSFIELD	0041	15021	000		46,757.00
					*	
401 N 1ST STREET	BURBANK	0066	19007	036		32,478.00
					*	
120 EAST COMPTON BLVD	COMPTON	0039	19009	036		10,643.00
					*	
5660 SEPULVEDA BLVD	CULVER CITY	0080	19011	036		41,510.00
					*	
14600 OCEANGATE AVE	HAWTHORNE	0021	19016	036		41,878.00
					*	
745 WEST HUNTINGTON DR	MONROVIA	0144	19024	036		18,341.00
					*	
2415 VIA CAMPO AVE	MONTEBELLO	0042	19025	036		46,670.00
					*	
2735 S TOWNE AVE	POMONA	0074	19028	036		17,424.00
					*	
1251 4th ST	SANTA MONICA	0020	19033	036		29,262.00
					*	
901 SPRING ST	SIGNAL HILL	0134	19035	036		19,794.00
					*	
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.						2,562,844.

OWNER'S NAME

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	2 OF 10	

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BOE-530 (1/10/01) REV. 7/0 (4-08)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

The original copy of this schedule must be attached to your return.  
Read instructions before preparing.

Please round cents to the  
nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1	SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
		CO	JUR	ADD- ON	IN LICU	
25415 CRENSHAW BLVD	TORRANCE	0051	19038	036		28,609.00
2851 EASTLAND CENTER DRIVE	WEST COVINA	0037	19040	036		32,647.00
4950 FACULTY DRIVE	LAKEWOOD	0025	19042	036		30,903.00
4400 SUNSET BOULEVARD	LOS ANGELES	0019	19050	036		38,656.00
6401 CONOGA AVE	WOODLAND HILLS	0036	19050	036		30,252.00
13630 VICTORY BOULEVARD	VAN NUYS	0038	19050	036		32,131.00
1839 S. LA CIENEGA BLVD	LOS ANGELES	0045	19050	036		27,292.00
1145 GAYLEY AVE	LOS ANGELES	0073	19050	036		.00
19330 PLUMMER ST	NORTHRIDGE	0108	19050	036		36,252.00
TOTAL FOR THIS TAX CODE *						164,583.00
2180 BELLFLOWER BLVD	LONG BEACH	0085	19060	036		22,831.00
1600 S AZUSA AVE	CITY OF INDUSTRY	0056	19062	036		17,119.00
680 SOUTH LEMON AVE	WALNUT	0067	19062	036		.00
505 SOUTH CHERYL LA	CITY OF INDUSTRY	0122	19062	036		2.00
TOTAL FOR THIS TAX CODE *						17,121.00
11750 E FIRESTONE BLVD	NORWALK	0044	19066	036		22,682.00
200 EAST BROADWAY ST	GLENDALE	0092	19070	036		28,274.00
39331 10TH STREET WEST	PALMDALE	0121	19094	036		39,236.00

TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.

2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	AP CODE	PERIOD	PAGE	EFT
99487429		SR 2	23233-1463	2408		3 OF 10

BOE530 1/060

BOE-531 (REV. 12-11-08)

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

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nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	SR	ADD- ON	IN DEU	
39 NORTH ROSEMEAD BLVD 25610 N THE OLD RD	PASADENA	0023	19998	036		*	34,577.00
	VALENCIA	0104	19998	036			28,797.00
TOTAL FOR THIS		TAX CODE		*			63,374.00
330 BELLAM BLVD	SAN RAFAEL	0009	21028	126		*	11,448.00
3275 R STREET	MERCED	0079	24025	127		*	14,146.00
1910 North Davis Rd	Salinas	0055	27045	128		*	26,263.00
905 PLAYA AVE	SAND CITY	0089	27072	000	0019	*	21,961.00
835 E BIRCH ST	BREA	0145	30012	037		*	15,539.00
123 ORANGE FAIR MALL	FULLERTON	0082	30013	037		*	22,559.00
7881 EDINGER AVE	HUNTINGTON BEACH	0033	30014	037		*	41,623.00
1020 W IMPERIAL HWY	LA HABRA	0146	30016	037		*	20,551.00

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2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	4 OF 10	

01/06/08 1:00

BOE-530 (F KONT) REV 70 (2-00)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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Please round cents to the  
nearest whole dollar

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	AP	AD- ON	IN DEU	
1101 NEWPORT CENTER DR	NEWPORT BEACH	0060	30017	037		*	34,204.00
12325 Seal Beach Blvd	Seal Beach	0138	30021	037		*	19,449.00
8371 LA PALMA AVE	BUENA PARK	0022	30023	037		*	23,616.00
1407 W CHAPMAN AVE	ORANGE	0024	30030	037		*	19,230.00
13752 JAMBOREE RD	IRVINE	0084	30036	037		*	28,079.00
26542 TOWNE CENTRE DR	FOOTHILL RANCH	0136	30037	037		*	10,232.00
24001 EL TORO RD	LAGUNA HILLS	0099	30038	037		*	38,875.00
30491 AVENIDA DE LAS FLORES	RANCHO SANTA MARGARI	0125	30043	037		*	20,010.00
10271 FAIRWAY DR	ROSEVILLE	0123	31015	000		*	24,761.00
10255 MAGNOLIA AVE	RIVERSIDE	0043	33050	026		*	11,589.00

TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.

2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	5	OF 10

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BOE-531 (7/20/11) REV. 7/20/11

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2			AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	ADD- ON	IN LTD
72369 HIGHWAY 111	PALM DESERT	0101	33058	026		24,324.00
					*	
78-825 HWY 111	LA QUINTA	0126	33060	026		21,033.00
					*	
12530 DAY STREET	MORENO VALLEY	0014	33061	026		27,399.00
37610 EUCALYPTUS AVE	MORENO VALLEY	0148	33061	026		11,986.00
	TOTAL FOR THIS TAX CODE			*		39,385.00
40480 WINCHESTER RD	TEMECULA	0105	33062	026		34,785.00
					*	
24390 VILLAGE WALK PL	MURRIETA	0140	33065	026		13,543.00
					*	
6397 PATS RANCH RD	MIRA LOMA	0141	33998	026		9,668.00
					*	
205 SERPA DR	FOLSOM	0147	34003	023		24,822.00
					*	
7980 ARCADIA BLVD	CITRUS HEIGHTS	0016	34012	023		20,980.00
					*	
8211 LAGUNA BLVD	ELK GROVE	0015	34013	023		35,153.00
					*	
2121 ARDEN WAY	SACRAMENTO	0017	34998	023		24,415.00
					*	
TOTAL: This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-L, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.						2,562,844.

OWNER'S NAME

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER	INDUSTRY	TAX CODE	2PCODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408	6	OF 10

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BOE-530 (CONT.) REV. 70 (4-68)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO.	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	PR	ADD CH	IN LEI	
16685 SIERRA LAKES PKWY	FONTANA	0137	36009	031			18,408.00
					*		
555 E HOSPITALITY LANE	SAN BERNARDINO	0102	36060	031			34,982.00
					*		
5150 NORTH PLAZA LANE	MONTCLAIR	0034	36071	031			24,027.00
					*		
12133 MALL BLVD	VICTORVILLE	0053	36072	031			32,166.00
					*		
12260 FOOTHILL BOULEVARD	RANCHO CUCAMONGA	0070	36075	031			38,191.00
					*		
1138 WEST VALLEY PARKWAY	ESCONDIDO	0052	37004	013			16,180.00
					*		
8820 GROSSMONT BLVD	LA MESA	0048	37005	013			27,330.00
					*		
1608 SWEETWATER RD	NATIONAL CITY	0047	37006	013			34,369.00
					*		
333 NORTH EL CAMINO REAL	ENCINITAS	0078	37018	013			26,690.00
					*		
3331 ROSECRANS STREET	SAN DIEGO	0049	37060	013			22,765.00
3998 CLAIREMONT MESA BLVD	SAN DIEGO	0050	37060	013			24,103.00
11710 CARMEL MOUNTAIN RD	SAN DIEGO	0061	37060	013			31,271.00
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OWNER'S NAME:

**CIRCUIT CITY STORES WEST COAST INC**

ACCOUNT NUMBER	INDUSTRY	TAX CODE	AP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408		7 OF 10

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SEE 500 (FORM 1999) (2004)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2			AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	ADD- ON	IN DEB
TOTAL FOR THIS TAX CODE *						
1715 HACIENDA DRIVE	VISTA	0063	37095	013		78,139.00
					*	17,773.00
1200 VAN NESS AVE	SAN FRANCISCO	0013	38001	052		30,777.00
840 MARKET STREET	SAN FRANCISCO	0137	38001	052		.00
TOTAL FOR THIS TAX CODE *						30,777.00
2210 DANIELS ST	MANTECA	0132	39002	038		17,669.00
					*	
4994 N CLAREMONT AVE	STOCKTON	0012	39060	038		26,910.00
					*	
1531 Froom Ranch Way	San Luis Obispo	0135	40023	157		24,652.00
					*	
303 GELLERT BLVD	DALY CITY	0018	41015	019		34,565.00
					*	
1880 S GRANT STREET	SAN MATEO	0003	41021	019		25,173.00
					*	
1731 E Bayshore Rd	E PALO ALTO	0139	41030	019		13,577.00
					*	
1535 SOUTH BRADLEY RD	SANTA MARIA	0093	42002	030		13,529.00
					*	
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OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EPT
99487429		SR Z	23233-1463	2408	8	OF 10

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STATE OF CALIFORNIA (BOE-531-E) (2004-08)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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nearest whole dollar.

TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1		SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
			CO	JUR	ADD- ON	IN- LEU	
3761 STATE STREET	SANTA BARBARA	0030	42060	030			27,510.00
					*		
1007 COCHRAN RD	MORGAN HILL	0142	43004	124			14,773.00
					*		
111 E EL CAMINO REAL	SUNNEYVALE	0004	43007	064			22,938.00
					*		
5353 ALMADEN EXPWY	SAN JOSE	0001	43060	007			29,218.00
4080 W STEVENS CREEK BLVD	SAN JOSE	0002	43060	007			30,806.00
2217 QUIMBY RD	SAN JOSE	0064	43060	007			27,246.00
TOTAL FOR THIS TAX CODE				*			87,270.00
1664 COMMERCIAL WAY	SANTA CRUZ	0090	44998	062			34,393.00
					*		
1175 DANA DRIVE	REDDING	0083	45060	000			22,992.00
					*		
1560 GATEWAY BLVD	FAIRFIELD	0065	48083	066			14,375.00
					*		
130 NUT TREE PKWY	VACAVILLE	0149	48086	066			20,142.00
					*		
2805 SANTA ROSA AVE	SANTA ROSA	0008	49060	130			32,939.00
					*		
3401 DALE ROAD	MODESTO	0010	50012	059			31,180.00
TOTAL This Schedule C total must agree with line 17 of your return unless you are provided with either BOE-531, Schedule B, or BOE-531-E, Schedule L. If you receive Schedule B, please enter this Schedule C total on line B2 of Schedule B. If you receive Schedule L, please enter this Schedule C total on line L2 of Schedule L.							2,562,844.

OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER	INDUSTRY	TAX CODE	ZIP CODE	PERIOD	PAGE	EFT
99487429		SR Z	23233-1463	2408		9 OF 10

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BOE-530 (REV. 10/1/00)

**SCHEDULE C - DETAILED ALLOCATION BY  
SUBOUTLET OF COMBINED STATE AND UNIFORM LOCAL SALES AND USE TAX**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

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TAXING JURISDICTION IN WHICH PLACES OF BUSINESS ARE LOCATED COLUMN 1	SUB- OUTLET NO	TAX AREA CODE COLUMN 2				AMOUNT OF 1% COMBINED STATE AND LOCAL TAX COLUMN 3
		00	00	ADD- ON	IN LEU	
2821 COUNTRYSIDE DR TURLOCK	0133	50017	059		*	21,558.00
3930 S MOONEY BLVD VISALIA	0059	54056	163		*	22,748.00
421 W ESPLANADE DR OXNARD	0112	56013	000		*	30,812.00
600 WEST HILLCREST DR THOUSAND OAKS	0058	56017	000		*	14,374.00
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OWNER'S NAME

CIRCUIT CITY STORES WEST COAST INC

ACCOUNT NUMBER

99487429

INDUSTRY

TAX CODE

SR Z

ZIP CODE

23233-1463

PERIOD

2408

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BOE-531-L (00)



TATF .IFORNIA  
BOARD OF EQUALIZATION  
ONE  
485 LEXINGTON AVENUE, SUITE 400  
NEW YORK, NY 10017  
212-697-4680 • FAX 212-697-5146  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco  
BILL LEONARD  
Second District, Ontario/Sacramento  
MICHELLE STEEL  
Third District, Rolling Hills Estates  
JUDY CHU, Ph.D.  
Fourth District, Los Angeles  
JOHN CHIANG  
State Controller  
RAMON J. HIRSIG  
Executive Director

April 24, 2009

Mr. Jeff Knopke  
Circuit City Stores West Coast, Inc.  
9950 Mayland Drive  
Richmond, VA 23233-1464

IN REPLY REFER TO:  
SR-Y-OHB-99-487429

Dear Mr. Knopke:

We are enclosing a copy of the *Report of Field Audit* resulting from our audit of your firm's records and accounts for the permit number referenced above. In a recent discussion, you indicated that you disagree with our audit recommendations. Your contention(s), along with a summary of our recommendations, are included in the report under "Discussion of Audit Findings." If you do not understand any portion of the audit findings, you may contact this office for clarification. If you have not received a copy of the audit working papers, including narrative comments, you may request one from this office.

We are forwarding the audit report to our headquarters office for processing and issuance of a *Notice of Determination* (i.e., billing). If this process results in a material change to the report you will be informed prior to billing. When you receive the *Notice*, you can appeal by filing a *Petition for Redetermination*, if you still believe there is an error in the audit report. The *Notice* includes instructions on how to file a petition.

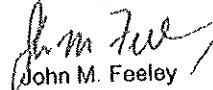
Interest will continue to accrue monthly on the amount of unpaid tax, and will be added to the current interest amount shown on the *Notice of Determination* "interest through" calculation date. Interest will stop accruing on any tax amounts paid. The payment of all or part of the tax liability shown on the *Notice* will in no way affect your right to protest portions with which you do not agree. If you would like to make a payment before receiving the *Notice*, please refer to the enclosed *Audit Payment Information* sheet and provide the requested information with your payment.

You have six (6) months from the date of payment to file a claim for refund on any disputed amounts. If we find that you are entitled to a refund, any overpayments of tax will be credited to outstanding liabilities on your account at the time the overpayment is approved. Any balance will be refunded with credit interest (on the overpaid tax only) at the rate established for refunds.

Please note, although we have applied commonly accepted auditing procedures during the course of your audit, the auditor may not have examined all of your transactions. There may still be transactions that you are not reporting correctly. If you have any questions as to the application of tax to a particular product or transaction, please contact your auditor in writing and he/she will provide you with a written response.

We appreciate your cooperation during the audit of your records.

Sincerely,

  
John M. Feeley

Area Administrator

Enclosures

Discussed with:

cc:

*When you have been unable to resolve a matter through the normal appeals process or for information on your rights, you may contact the Taxpayers' Rights Advocate Office toll-free at 888-324-2798.*

5/24/09



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Audit Payment Form

Account No: SR Y OHB 099-487429

Case Id: 429103

Firm Name: CIRCUIT CITY STORES  
Owner: CIRCUIT CITY STORES WST CST  
Owner Type: Corporation  
Business Address: 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464  
Mailing Address: 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464

Lead Auditor: ZOILA R SAQUIGELA  
Supervisor: GIULIO R DISALVO  
Board Office: New York Office  
Audit Report Date: March 31, 2009  
Business Code/SIC: 31  
Account Status: Closed-Out  
Tax Area Code: 5900099/0000

LIABILITY (OR CREDIT) DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

Examination Period: 7/01/05 to 11/09/08	Tax	Interest to 5/31/09	Penalty	Total
Total Disclosed by Examination	2,811,230.23	100,577.05		2,911,807.28

Balance as of 5/31/09	\$2,811,230.23	\$100,577.05	\$0.00	\$2,911,807.28
-----------------------	----------------	--------------	--------	----------------

While this report is not a bill, payment is encouraged to prevent the accrual of additional interest.

Additional interest will accrue monthly on the unpaid Tax after 5/31/09.

**Total Amount as of 5/31/09 is \$2,911,807.28**

Payment Amount Included \_\_\_\_\_

Please Remit your Payment to:

State Board of Equalization  
P.O. Box 942879  
Sacramento, California  
94279-0013

Please include this page with your payment and make your check or money order payable to:  
State Board of Equalization.

Always write your account number ( 099-487429 ) on your check or money order.

4/24/09  
Page: 1



# State Board of Equalization - Sales and Use Tax Department

## REPORT OF FIELD AUDIT

**Account No:** SR Y OHB 099-487429  
**Firm Name:** CIRCUIT CITY STORES  
**Owner:** CIRCUIT CITY STORES WST CST  
**Owner Type:** Corporation  
**Business Address:** 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464  
**Mailing Address:** 9950 MAYLAND DRIVE-ATTN TAX DEPT  
RICHMOND, VA 23233-1464

**Case Id:** 429103  
**Lead Auditor:** ZOILA R SAQUICELA  
**Supervisor:** GIULIO R DISALVO  
**Board Office:** New York Office  
**Audit Report Date:** March 31, 2009  
**Business Code/SIC:** 31  
**Account Status:** Closed-Out  
**Tax Area Code:** 590000070000

A Local Tax Allocation was completed  
A Legal Bankruptcy Case Exists

### LIABILITY (OR CREDIT) DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

Examination Period: 7/01/05 to 11/09/08	Tax	Interest to 5/31/09	Penalty	Total
<b>Total Disclosed by Examination</b>	2,811,230.23	100,577.05		2,911,807.28
<b>Balance as of 5/31/09**</b>	\$2,811,230.23	\$100,577.05	\$0.00	\$2,911,807.28

\*\*If multiple billings have occurred, the audit liability may not equal the sum of the billings

### TAXABLE MEASURE DISCLOSED BY EXAMINATION OF TAXPAYER'S RECORDS

	State, Local County and STII	Total District
1 Disallowed sales for resale based on prior audit percentages	406,473	751,718
2 Disallowed claimed bad debts - actual	33,919,948	66,609,301
	\$34,326,421	\$67,361,019



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-487429  
CaseId: 429103

DETAILED ANALYSIS OF TAXABLE MEASURE BY JURISDICTION

	<u>ACHC</u> <u>(District)</u>	<u>ACTI</u> <u>(District)</u>	<u>BARTA</u> <u>(District)</u>	<u>BARTC</u> <u>(District)</u>	<u>BARTS</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	15,775	15,775	15,775	10,384	5,260
2 Disallowed claimed bad debts - actual	1,316,432	1,316,432	1,316,432	866,689	438,754
	<u>\$1,332,207</u>	<u>\$1,332,207</u>	<u>\$1,332,207</u>	<u>\$877,073</u>	<u>\$444,014</u>
	<u>CCPS</u> <u>(District)</u>	<u>CCTA</u> <u>(District)</u>	<u>ECPS</u> <u>(District)</u>	<u>FCPL</u> <u>(District)</u>	<u>FCTA</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	8,954	10,384	34,851	8,954	8,954
2 Disallowed claimed bad debts - actual	747,190	866,689	2,908,397	747,190	747,190
	<u>\$756,144</u>	<u>\$877,073</u>	<u>\$2,943,248</u>	<u>\$756,144</u>	<u>\$756,144</u>
	<u>FCZA</u> <u>(District)</u>	<u>LACT</u> <u>(District)</u>	<u>LATC</u> <u>(District)</u>	<u>HRCO</u> <u>(District)</u>	<u>MTGR</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	8,954	112,589	112,589	1,284	24,608
2 Disallowed claimed bad debts - actual	747,190	9,395,556	9,395,556	133,952	2,053,513
	<u>\$756,144</u>	<u>\$9,508,145</u>	<u>\$9,508,145</u>	<u>\$135,236</u>	<u>\$2,078,121</u>
	<u>MTPS</u> <u>(District)</u>	<u>NCGT</u> <u>(District)</u>	<u>OCTA</u> <u>(District)</u>	<u>RCTC</u> <u>(District)</u>	<u>RFEL</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	2,787	23,192	42,411	24,582	2,541
2 Disallowed claimed bad debts - actual	442,739	2,900,036	3,539,139	2,051,276	264,922
	<u>\$445,526</u>	<u>\$2,923,228</u>	<u>\$3,581,550</u>	<u>\$2,075,858</u>	<u>\$267,463</u>
	<u>RMGT</u> <u>(District)</u>	<u>SAND</u> <u>(District)</u>	<u>SBAB</u> <u>(District)</u>	<u>SBER</u> <u>(District)</u>	<u>SBRN</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	10,384	5,545	8,230	24,608	12,864
2 Disallowed claimed bad debts - actual	866,689	462,735	686,640	2,053,513	2,043,562
	<u>\$877,073</u>	<u>\$468,280</u>	<u>\$694,870</u>	<u>\$2,078,121</u>	<u>\$2,056,426</u>
	<u>SCCT</u> <u>(District)</u>	<u>SCGF</u> <u>(District)</u>	<u>SCHY</u> <u>(District)</u>	<u>SCOS</u> <u>(District)</u>	<u>SCVI</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	17,995	3,608	7,425	4,881	14,387
2 Disallowed claimed bad debts - actual	1,501,636	1,500	619,413	407,310	1,500,136
	<u>\$1,519,631</u>	<u>\$5,108</u>	<u>\$626,838</u>	<u>\$412,191</u>	<u>\$1,514,523</u>



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-407429  
CaseId: 429103

DETAILED ANALYSIS OF TAXABLE MEASURE BY JURISDICTION

	<u>SDTC</u> <u>(District)</u>	<u>SFPF</u> <u>(District)</u>	<u>SFTA</u> <u>(District)</u>	<u>SJTA</u> <u>(District)</u>	<u>SLNS</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	34,851	5,260	5,260	5,332	4,434
2 Disallowed claimed bad debts - actual	2,908,397	438,754	438,754	444,894	462,273
	<u>\$2,943,248</u>	<u>\$444,014</u>	<u>\$444,014</u>	<u>\$450,226</u>	<u>\$466,707</u>
	<u>SL0G</u> <u>(District)</u>	<u>SLPL</u> <u>(District)</u>	<u>SMCT</u> <u>(District)</u>	<u>SHTA</u> <u>(District)</u>	<u>SNTA</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	688	4,100	10,383	10,383	4,881
2 Disallowed claimed bad debts - actual	109,402	342,049	866,385	866,385	407,310
	<u>\$110,090</u>	<u>\$346,149</u>	<u>\$876,768</u>	<u>\$876,768</u>	<u>\$412,191</u>
	<u>SPFG</u> <u>(District)</u>	<u>SRPS</u> <u>(District)</u>	<u>STAT</u> <u>(District)</u>	<u>STCL</u> <u>(District)</u>	<u>SZPL</u> <u>(District)</u>
1 Disallowed sales for resale based on prior audit percentages	5,332	4,881	14,268	7,023	7,425
2 Disallowed claimed bad debts - actual	444,894	407,310	1,190,759	585,867	619,413
	<u>\$450,226</u>	<u>\$412,191</u>	<u>\$1,205,027</u>	<u>\$592,890</u>	<u>\$626,838</u>
	<u>TAMC</u> <u>(District)</u>	<u>TCTA</u> <u>(District)</u>	<u>VPST</u> <u>(District)</u>	<u>VSTA</u> <u>(District)</u>	<u>Total District</u>
1 Disallowed sales for resale based on prior audit percentages	3,178	1,816	3,474	18,219	751,718
2 Disallowed claimed bad debts - actual	265,186	288,577	289,983	2,894,301	66,609,301
	<u>\$268,364</u>	<u>\$290,393</u>	<u>\$293,457</u>	<u>\$2,912,520</u>	<u>\$67,361,019</u>



State Board of Equalization - Sales and Use Tax Department

REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-487429  
Case Id: 429103

Reviewed By: \_\_\_\_\_

Date Reviewed: \_\_\_\_\_

Statute Date:

A Waiver is attached and the Waiver Period is: 07/01/05 to 06/30/08

First Expiring Period is: 07/01/05, and includes Tax of: \$3,024.69

Auditors who worked on the examination:

<u>OFFICE</u>	<u>AUDITOR ID</u>	<u>CLASS</u>	<u>AUDIT MADE BY</u>	<u>HOURS</u>
OHB	00000001778	3	ZOILA R SAQUICELA	124.00
Total Hours				124.00

The Reported Measure during the period of examination is \$4,266,722,286.

The Audit findings were discussed with: Tax Manager Jeff Knopke

Tel: (804) 486-2498

The taxpayer **does not agree** with the audit findings.

A copy of this Audit Report was furnished to the taxpayer along with a BOE-0079-B letter.

A credit is not involved but a claim for a refund was secured from the taxpayer and previously submitted to HQ.

A Tax Clearance is not required.

A Cigarette Indicia inspection revealed: None sold

The taxpayer is a Business with more than 50 Employees.

This business sells televisions, computers, or portable DVD players.

The directives provided to the taxpayer are: Pamphlets 17, 70 and 76 and Regulation 1642

General Comments

**Type of Business Organization**

Corporation. David McDonas - President, Michael Chalifoux - Vice President, Philip Dunn - Treasurer. Prior audit through 12/31/04. The taxpayer filed for bankruptcy on 11/10/08. The bar date is 5/11/09.

**Class of Business**

Retailer of consumer electronics, computers, appliances, etc.

**Books and Records**

Double entry system that is adequate for sales and use tax purposes. Records regarding bad debts claimed on the returns were not available for verification. Tax reimbursement is added to the selling price..

**Penalty**

None is recommended. The taxpayer reported over \$4 billion in taxable measure. We do not believe that the additional taxable measure was the result of negligence.

**Claim for Refund**

The taxpayer filed a claim for refund for bad debts not written off for the period 4/1/05 to 6/30/08. No dollar amount was stated in the claim. Due to the short time allowed by the bar date, the taxpayer was not able to supply any documentation in support of their claim. No refund is recommended.

The overpayment was not caused by carelessness. Credit interest is recommended.

**Tax Error on Returns**

The \$-2,682 tax error on the transcript for 2007 was due to a mathematical error on the



Page: 1

4/24/09  
Page: 5



## State Board of Equalization - Sales and Use Tax Department

### REPORT OF FIELD AUDIT

Account No: SR Y OHB 099-487429  
Case Id: 429103

#### **Tax Error on Returns (cont.)**

returns. The taxpayer supplied a claim for refund. The auditor recommends that the \$-2,682 overpayment be applied against this audit.

#### **Related Accounts**

Circuit City Purchasing (100-463241) was audited through 11/9/08.

Circuit City Stores (17-692815) was last audited through 3/31/01.

#### **Discussion with Taxpayer**

The audit was discussed with Jeff Knopke, Tax Manager.

#### **Taxpayer's Position**

The taxpayer believes that the amounts claimed as bad debts were valid deductions representing bad debts written off for bad checks and credit cards. He believes that the amounts claimed for 4/1/05 to 6/30/08 were actually understated.

#### **Auditor's Position**

The taxpayer has not provided documentation to support the \$33,919,948 in bad debts that were claimed on the returns. That includes the \$31,778,646 that was claimed for 10/1/08 to 11/9/08.

He has also not supplied documentation in support of the claim refund (bad debts).

Due to the bar date, we are unable to grant the taxpayer additional time to document the bad debts claimed.

#### **Supervisor Comments**

I agree with the auditor's recommendation to not add a penalty. - Giulio DiSalvo, STAI

I agree. - John M. Feeley, Area Administrator

#### **Franchise Tax Board**

Not applicable.

The fixed assets purchases made by their operational division without tax were not accrued and reported with their returns but were reported under account #SC OHB 100-463241, Circuit City Purchasing Co., LLC. This account was set up on 9/1/04 to keep control of all the fixed assets purchases for all new stores. There were no errors noted. The ex-tax fixed assets purchases made for all their existing stores were accrued and reported on line 2 of tax returns. There were no errors noted. *Circuit City Purchasing Co., LLC was audited by this auditor through 11/9/08.*

#### EXPENSE PURCHASES

A cursory review of several expense accounts was made. All expense purchases were made locally or the tax was accrued, and reported on returns.

Expense purchases made by the operational division for all new stores were reported under account # SC OHB 100-463241. This account was also audited through 11/9/08, *See above.*

#### BAD DEBTS

Taxpayer claimed bad debt deductions throughout the audit period. Per discussion with taxpayer the bad debts were related to sales made with bad credit cards and checks. Due to the fact that taxpayer was busy with their fiscal year end reporting's, and bankruptcy, taxpayer was not able to provide the back up work papers to support the offset bad debt deductions with recoveries in computing bad debt reported during the audit. Auditor was not able to verify the amounts for bad debts; therefore, the bad debt deductions were disallowed. Schedule 12B lists all amounts disallowed in the audit. Taxpayer does not agree with this area of the audit, and has indicated that he will file a petition for redetermination.

#### CLAIM FOR REFUND 2Q05 - 2Q08

Taxpayer filed a claim for refund on 7/28/08 in the amount of \$unstated for the period 4/1/05 through 6/30/08. However, taxpayer was not able to provide the documentation to support the claim, and has indicated that they no longer wish to pursue the claim.

#### TAX ERRORS / ADDITIONAL TAX ADJUSTMENTS

A math error was noted on the 2Q07 return which resulted in an overpayment of \$2,682. Taxpayer has filed a claim for refund for this amount, and auditor is recommending the amount be refunded to the taxpayer. This amount is being handled by the Audit Determination and Refund Section (see exhibit 3).

#### BROCHURES & PROMOTIONAL MATERIAL

Brochures & promotional material are distributed as inserts in newspapers. Tax is accrued and reported on amounts consumed in their stores. No further verification was done or deemed warranted.

#### LOCAL TAXES

Tax collected were properly billed and allocated to the county where the property was located. Additional liability included in the audit was also allocated to the county of use.

*city sales were made and in state. Rotation was a percentage sales. Internet sales are reported to the county of destination county/jurisdiction.*

#### TRANSIT TAXES

Transit taxes were properly billed and reported to the county districts whenever it was applicable. The transit taxes were allocated on a % basis based on amounts reported through 9/30/08. The tax matrix was not use since the audit period was through the bankruptcy date of 11/9/08.

NOTE: Reviewer noted errors in the calculation of district tax percentages. As this is a Bankruptcy case Area Administrator wants the corrections to be made in the reaudit phase. See the attached go-back for corrections recommended by the reviewer. *RV*

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)

IN RE: )  
 )  
CIRCUIT CITY STORES, INC., *et al.*, ) Case No. 08-35653 (KRH)  
 ) (Chapter 11)  
 ) Jointly Administered  
Debtors. )

AFFIDAVIT OF PETER O. LARSEN IN SUPPORT OF LIQUIDATING TRUSTEE'S  
RESPONSE IN OPPOSITION TO STATE OF CALIFORNIA, STATE BOARD OF  
EQUALIZATION'S MOTION TO RECONSIDER

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF DUVAL )

PETER O. LARSEN, being duly sworn, deposes and says:

1. I am a shareholder of the firm Akerman Senterfitt ("Akerman"), which prior to the confirmation of the *Second Amended Plan* was employed by the debtors in the above-captioned cases (collectively, the "Debtors"), in the ordinary course of their business pursuant to the Court's *Order Granting Debtors' Motion For Order Pursuant To Bankruptcy Code Sections 105(A), 327, 330 And 331 Authorizing Debtors To Employ Professionals Utilized In The Ordinary Course Of Business*, primarily to perform tax consulting services and representation. Akerman continues to be employed by the Circuit City Stores, Inc. Liquidating Trust (the "Trust") for the same purpose, continuing Akerman's involvement in several ongoing tax matters. I am the Akerman attorney responsible for supervising services for the Trust, and am familiar with all of the Trust's tax related matters for which Akerman is performing services. My Akerman colleagues Maria Carantzas and Tim Gillis, and I have been the primary points of

contact between the Debtors, the Trust and the State of California, State Board of Equalization ("BOE").

2. I make this Affidavit based on my personal knowledge and my review of the books, records, and documents prepared and maintained by Akerman in the ordinary course of its business. I have become familiar with the manner and method in which Akerman maintains its books and records in its regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted. I certify that all of the exhibits attached to this Affidavit are true and accurate copies of the original documents. I have personal knowledge that the facts stated in this Affidavit are true. I am authorized by Akerman and the Trust to make this Affidavit.

3. BOE filed the following claims against the Debtors on or before May 11, 2009, the bar date for a governmental entity to file a proof of claim:

(a) priority claim in the amount of \$36,033.68 against Circuit City Purchasing Company, LLC (Claim No. 12002);

(b) administrative claim in the amount of \$325,605.29 against Circuit City Stores, Inc. (Claim No. 13186); and

(c) administrative claim in the amount of \$2,525,699.69 against Circuit City Stores West Coast, Inc. (Claim No. 13187) (Claim Nos. 12002, 13186, and 13187 shall hereinafter be referred to as the "Timely Filed Claims.")

4. On May 15, 2009, four days after the governmental bar date, BOE filed a late filed priority claim in the amount of \$2,846,666.34 for unpaid tax liability against Circuit City

West Coast, Inc. (the "Disallowed Claim," and together with the Timely Filed Claims, the "BOE Claims").

5. As part of Akerman's retention, I was tasked to review and potentially resolve the BOE Claims on behalf of the Debtors.

6. I was traveling to Sacramento, California on March 11, 2010 on another matter on March 8, 2010, so I e-mailed Larry Brammer, District Administrator, Out-of-State District, and asked him if he was interested in discussing a global resolution of the BOE's Claims against the Debtors. Larry referred me to Roberta Cornell, Legal Division, Investigations and Special Operations Branch (MIC 55).

7. Ms. Cornell e-mailed me on March 8, 2010 and suggested that we meet regarding the BOE's Claims at the conclusion of my other matter on March 11, 2010.

8. On March 9, 2010, in advance of my meeting with Ms. Cornell, I sent an e-mail to Ms. Cornell advising her that:

- Circuit City also has accrued but not yet filed refund claims in the approximate amount of \$840,000 for accounts charged off during the period of 11/1/08 through 12/31/09.
- The BOE filed the Disallowed Claim late as the governmental bar date for filing claims was May 11, 2009 and the Disallowed Claim was not filed/stamped with the Bankruptcy Court until May 15, 2009.
- The Debtors filed an objection to the Disallowed Claim on the basis that it was filed late and on the underlying merits.
- The bankruptcy judge can allow a late filed claim only if the BOE proves "excusable neglect" as to why the claim was filed late.
- This bankruptcy judge has regularly denied requests related to late filed claims.

A true and correct copy of my March 9, 2010 e-mail is attached hereto as Exhibit A.

9. On March 11, 2010, I met with Roberta Cornell, Sid Zigelman (Acting Business Taxes Administrator III) and Larry Brammer (the "BOE Representatives") regarding the BOE

Claims and a global resolution of the BOE Claims. At the meeting, I advised the BOE Representatives that the Disallowed Claim was filed late and that the Debtors had filed an objection to the Disallowed Claim on that basis. I also advised the BOE Representatives that substantially all of the Disallowed Claim lacked merit even if timely filed because the Debtors' underlying sales tax deductions based on bad debt losses on taxable sales were proper. At the conclusion of the meeting, BOE asked me to produce on behalf of the Debtors additional information regarding the sales tax deductions and other information related to the Timely Filed Claims. After the meeting, I met with Larry Brammer alone and I again advised him that the Disallowed Claim was filed late.

10. On October 28, 2010, I forwarded correspondence to the BOE wherein I again advised Larry Brammer at the BOE that the Disallowed Claim was filed late and that the bankruptcy court disallowed the claim on March 31, 2010. A true and correct copy of my October 28, 2010 letter is attached hereto as Exhibit B.

11. On November 3, 2010, I e-mailed Larry Brammer who in turn e-mailed back to me that I should speak with Keith Meredith regarding the October 28, 2010 correspondence I sent to the BOE. I forwarded Mr. Brammer's request to Tim Gillis of Akerman, and requested that he follow up with Mr. Brammer and Mr. Meredith in an effort to reach a global resolution of the BOE Claims.

12. Since the March 11, 2010 meeting, I have not had any discussions with the BOE about the prospect of consensual allowance of the Disallowed Claim. Moreover, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to deem the Disallowed Claim as timely filed. Similarly, I have never conveyed to the BOE or

otherwise any agreement on behalf of either the Debtors or the Trust to stay the time period in which the BOE would be required to reconsider the Expungment Order.

**FURTHER AFFIANT SAYETH NAUGHT.**

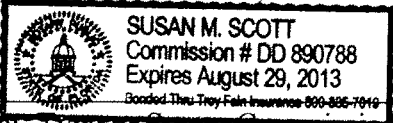
*Peter Larsen*

Peter O. Larsen  
Shareholder  
Akerman Senterfitt  
50 N. Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Phone: (904) 798-3700  
Fax: (904) 798-3730

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF DUVAL                )

The foregoing instrument was sworn to and subscribed before me this 27<sup>th</sup> day of June, 2011, by Peter O. Larsen, who is:

- ☒ personally known to me; or
- ☐ produced a driver's license issued by the \_\_\_\_\_ Department of Highway Safety and Motor Vehicles as identification; or
- ☐ produced the following identification: \_\_\_\_\_

*Susan M. Scott*  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
 SUSAN M. SCOTT  
Commission # DD 890788  
Expires August 29, 2013  
Bonded Thru TROY Felt Insurance 800-886-7910

(Print, Type or Stamp Commissioned Name of  
Notary Public)



**Larsen, Peter (Sh-Jax)**

**From:** Larsen, Peter (Sh-Jax)  
**Sent:** Tuesday, March 09, 2010 12:31 PM  
**To:** 'Cornell, Roberta'  
**Subject:** RE: Circuit City--confidential settlement communication

Roberta, I am the outside attorney for Circuit City with respect to the claims listed below. This email summarizes the claims I would like to discuss and I would like to discuss a global resolution of all claims with expedited payment to the State. From a timing standpoint, my clients from GE will want to talk together after the meeting, so could we do this meeting in the late morning on Thursday? The Circuit City bad debt credits are one of the issues, but the proposal we have would not relate to the specific issues in the GE audit, so I would not discuss any pending GE specific issues at our meeting. If that does not work, then I would still like to meet after the GE meeting.

1. Circuit City West Coast # 99-487429. This claim relates to a sales tax audit for the period of 7/1/05-11/9/08 (\$2,811,230.23) and a hazardous substance tax for the period of 1/1/08 - 12/31-08 (\$12,908). Of the \$2,846,666.34, \$2,824,138.23 is tax and \$22,528.11 is interest. The bad debt tax portion of the sales tax audit is \$2,811,230. CC claimed bad debt credits of \$2.5M.

Circuit City also has accrued but not yet filed refund claims in the approximate amount of \$840,000 for accounts charged off during the period of 11/1/08 through 12/31/09. The auditor is from the New York office.

The State filed its proof of claim late. During the audit, the auditor bifurcated the audit as of the bankruptcy filing date (11/9/08) and issued an assessment for the period prior to 11/10/08 (prepetition liability). The governmental bar date was 5/11/09. The claim was not filed/stamped with the bankruptcy court until 5/15/09. CC filed an objection to this claim as being late and on the underlying merits. The bankruptcy judge can allow a late filed claim only if the State proves "excusable neglect" as to why the claim was filed late. This bankruptcy judge has regularly denied requests related to late filed claims.

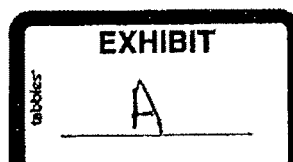
2. Circuit City Stores Inc. #17-692815. This claim relates to sales tax for October 2008 and the first 9 days of November 2008 (\$325K). The actual alleged unpaid taxes were from 10/1/08-11/9/08 and not 11/10/08-12/31/08. Since the sales tax is imposed directly on Circuit City, this claim should not be an administrative claim. Circuit City has objected to the claim being an administrative claim and objected to the claim on its underlying merits.

3. Circuit City West Coast # 99-487429 Same as #2. for Circuit City Stores, Inc. but for \$2.5M).

This claim involves the same issue as issue number 2 but for a separate entity.

4. Circuit City Purchasing Company (Proof of Claim number). The amount at issue is approximately \$36,000. We intend to concede this if we can reach agreement on the other 3 claims at our meeting so we do not intend to discuss this claim in any detail.

Thanks for taking the time to meet with me on Thursday, I look forward to meeting you.



5/18/2011

*Peter Larsen*  
**AKERMAN SENTERFITT**  
50 N. Laura Street, Suite 2500  
Jacksonville, Florida 32202

*Telephone: (904) 598-8602*  
*Facsimile: (904) 798-3730*  
*E-mail: peter.larsen@akerman.com (new address)*

---

**From:** Cornell, Roberta [mailto:Roberta.Cornell@boe.ca.gov]  
**Sent:** Monday, March 08, 2010 7:31 PM  
**To:** Larsen, Peter (Sh-Jax)  
**Subject:** Circuit City

Hi Peter,  
I'm the Administrator of the Bankruptcy Unit at the Board of Equalization. I understand that you are interested in discussing our claims filed in the Circuit City bankruptcy case while you are in California later this week.

I'd like to suggest a meeting to take place immediately after your meeting on the GE matter. I have a couple questions. Are you the attorney handling the Circuit City claims? If not, will an attorney be present at the meeting? Also, if you agree to meet, it would be helpful if you could provide some additional information regarding what you want to discuss i.e. bad debt, global settlement, etc.

Let me know if this will work for you and I'll set it up.

*Roberta Cornell*

State Board of Equalization  
Legal Division  
Investigations and Special Operations Branch (MIC 55)  
Phone: (916) 445-9197 FAX: (916) 327-0615

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**From:** Reilly, Kelly  
**Sent:** Monday, March 08, 2010 1:36 PM  
**To:** Cornell, Roberta  
**Subject:** FW: Circuit City

As discussed. Please let me know if you and Victoria are available and we'll try to schedule a meeting for Thursday. Thank you.

---

5/18/2011

**From:** Brammer, Larry  
**Sent:** Monday, March 08, 2010 1:19 PM  
**To:** Reilly, Kelly  
**Subject:** FW: Circuit City

Larry Brammer, C.P.A.  
Out-of-State District Administrator  
Office 916-227-6682  
Cell 916-716-5991

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---

**From:** peter.larsen@akerman.com [mailto:peter.larsen@akerman.com]  
**Sent:** Monday, March 08, 2010 12:14 PM  
**To:** Brammer, Larry  
**Subject:** Circuit City

Larry, I will be in a meeting with you and Freda on Thursday for GE. I have another matter I was hoping to address with you while I am in town, maybe separately on Thursday? I also represent Circuit City and the State has two proofs of claim filed in its bankruptcy case, one relating to bad debt credits and one relating to another issue. I would like to discuss with you a global settlement of these claims. Do you have time to meet on Thursday to discuss this matter? Feel free to include anyone you would want. If you agree to this, I will send you background information on this so that you can be ready for the meeting. Thanks

*Peter Larsen*  
**AKERMAN SENTERFITT**  
*50 N. Laura Street, Suite 2500*  
*Jacksonville, Florida 32202*

*Telephone: (904) 598-8602*  
*Facsimile: (904) 798-3730*  
*E-mail: peter.larsen@akerman.com (new address)*



[www.akerman.com](http://www.akerman.com) | Bio | V Card

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5/18/2011



Peter O. Larsen

Akerman Senterfitt  
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Suite 2500  
Jacksonville, FL 32202  
Tel: 904.798.3700  
Fax: 904.798.3730

Dir: 904.598.8602  
peter.larsen@akerman.com

October 28, 2010

**CONFIDENTIAL**  
**FOR SETTLEMENT PURPOSES ONLY**

Larry Brammer  
California State Board of Equalization  
450 N Street  
Sacramento, CA 94279

**Re: Circuit City Stores, Inc.**

Dear Larry:

As you are aware, Circuit City is a debtor in a Chapter 11 bankruptcy case pending in Richmond, Virginia. The California State Board of Equalization filed three proofs of claim in the bankruptcy case related to collected but unremitted sales tax reimbursement, Claim 13049 in the amount of \$2,846,666.34, Claim 13186 in the amount of \$325,605.29, and Claim 13187 in the amount of \$2,525,699.69. As you are also aware, Claim 13049 was filed late and the bankruptcy court disallowed the claim on March 31, 2010. The BOE claimed administrative priority for these Claims.

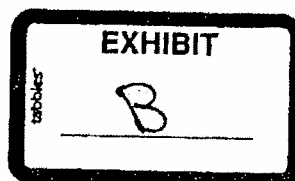
Circuit City filed its bankruptcy petition on November 10, 2008. On November 24, 2008, Circuit City made a payment equal to 90% of its October 2008 tax liability. In its December 22, 2008 Order, the Bankruptcy Court prohibited Circuit City from paying pre-petition non-trust fund taxes without further leave of the Court, thus the remaining 10% of October's liability and liability for the period November 1 through 9, 2008 was not paid and constitutes the basis for the Claims. All post-petition taxes have been timely remitted to the BOE.

As a threshold matter, it is necessary to determine whether the BOE's claims will be afforded administrative priority under Section 507(a)(2) of the Bankruptcy Code (as claimed by the BOE) or treated as unsecured claims of a governmental unit under Section 507(a)(8). If the claims fall within the application of Section 507(a)(8), they will be excluded from inclusion in Section 507(a)(2). See 11 U.S.C. § 503(b)(1)(B).

Section 507(a)(8) applies to unsecured claims of governmental units for certain kinds of prepetition taxes, including excise taxes. See 11 U.S.C. § 503(a)(8)(E). An excise tax is a tax that is imposed on the performance of an act, the engaging in any occupation, or the enjoyment of a privilege.

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{JAS70479;1}



Larry Brammer  
California State Board of Equalization  
October 28, 2010  
Page 2

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*See New Neighborhoods, Inc. v. West Virginia Workers' Compensation Fund*, 886 F.2d 714 (4th Cir. 1989), followed by *United States v. Unsecured Creditors' Comm. (In re C-T, Inc.)*, 977 F.2d 137 (4th Cir. 1992). It is well established that the California sales tax is an excise tax imposed upon the retailer for the "privilege of selling tangible personal property at retail." Ca. Rev. & Tax. Code, § 6051. The California sales tax is "not a tax on the sale or because of the sale but . . . an excise tax for the privilege of conducting a retail business measured by the gross receipts from sales." *Xerox Corp. v. County of Orange*, 66 Cal. App. 3d 746, 756 (Cal. App. 4th Dist. 1977), citing *City of Pomona v. State Bd. of Equalization*, 347 P.2d 904 (1959), citing *Livingston Rock & Gravel Co. v. De Salvo*, 288 P.2d 317 (1955); *National Ice etc. Co. v. Pacific F. Exp. Co.*, 79 P.2d 380 (1938); *Graham Bros., Inc. v. Los Angeles*, 44 P.2d 452 (1935); *People v. Herbert's of Los Angeles, Inc.* 39 P.2d 829 (1935). Furthermore, in its December 22, 2008 Order, the Bankruptcy Court found that the taxes at issue in the Claims are not trust fund taxes, but are instead taxes levied directly on Circuit City as taxes on the privilege of conducting a retail business. Thus, the Claims are unsecured claims of a governmental unit under Section 507(a)(8), and are not administrative claims.

Circuit City's Amended Chapter 11 Plan proposes to pay priority tax claims in full, but over a period not to exceed five years, on a quarterly basis with interest at the federal interest on judgments rate which is currently 0.22%. General unsecured claims will be paid from a liquidating trust and will only be paid if all administrative claims, priority claims, and miscellaneous secured claims are paid. Circuit City estimates that the distribution to general unsecured creditors will be 0% to 13.5%.

Furthermore, also at issue is the bad debt sales tax refund claim filed by Circuit City for the period November 2008 through December 2009. The approximate value of this refund claim is \$825,000. Circuit City is willing to discuss a global settlement of these issues with the BOE in an informal conference. Please contact me when you have time to discuss these issues.

Sincerely,



Peter O. Larsen

**EXHIBIT D**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

IN RE: )  
 )  
CIRCUIT CITY STORES, INC., *et al.*, ) **Case No. 08-35653 (KRH)**  
 ) **(Chapter 11)**  
 ) **Jointly Administered**  
Debtors. )

**AFFIDAVIT OF MARIA CARANTZAS IN SUPPORT OF LIQUIDATING TRUSTEE'S  
RESPONSE IN OPPOSITION TO STATE OF CALIFORNIA, STATE BOARD OF  
EQUALIZATION'S MOTION TO RECONSIDER**

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF DUVAL )

MARIA CARANTZAS, being duly sworn, deposes and says:

1. I am a shareholder of the firm Akerman Senterfitt ("Akerman"), which prior to the confirmation of the *Second Amended Plan* was employed by the debtors in the above-captioned cases (collectively, the "Debtors"), in the ordinary course of their business pursuant to the Court's *Order Granting Debtors' Motion For Order Pursuant To Bankruptcy Code Sections 105(A), 327, 330 And 331 Authorizing Debtors To Employ Professionals Utilized In The Ordinary Course Of Business*, primarily to perform tax consulting services and representation. Akerman continues to be employed by the Circuit City Stores, Inc. Liquidating Trust (the "Trust") for the same purpose, continuing Akerman's involvement in several ongoing tax matters. I am one of the Akerman attorneys responsible for providing services for the Trust, and am familiar with all of the Trust's tax related matters for which Akerman is performing services. My Akerman colleagues Pete Larsen, Tim Gillis, and I have been the primary points of contact between the Debtors, the Trust and the State of California, State Board of Equalization ("BOE").

2. I make this Affidavit based on my personal knowledge and my review of the

books, records, and documents prepared and maintained by Akerman in the ordinary course of its business. I have become familiar with the manner and method in which Akerman maintains its books and records in its regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted. I certify that all of the exhibits attached to this affidavit are true and accurate copies of the original documents. I have personal knowledge that the facts stated in this Affidavit are true. I am authorized by Akerman and the Trust to make this Affidavit.

3. Based on my review of the bankruptcy court filings, I am aware that the State of California, State Board of Equalization ("BOE") filed the following claims against the Debtors on or before May 11, 2009, the bar date for a governmental entity to file a proof of claim:

(a) priority claim in the amount of \$36,033.68 against Circuit City Purchasing Company, LLC (Claim No. 12002);

(b) administrative claim in the amount of \$325,605.29 against Circuit City Stores, Inc. (Claim No. 13186);

(c) administrative claim in the amount of \$2,525,699.69 against Circuit City Stores West Coast, Inc. (Claim No. 13187) (Claim Nos. 12002, 13186 and 13187 shall hereinafter be referred to as the "Timely Filed Claims.")

4. On May 15, 2009, four days after the governmental bar date, BOE filed a late filed priority claim in the amount of \$2,846,666.34 for unpaid tax liability against Circuit City West Coast, Inc. (the "Disallowed Claim," together with the Timely Filed Claims, the "BOE Claims").

5. As part of Akerman's retention, I was tasked to review and potentially resolve the

BOE Claims on behalf of the Debtors.

6. On November 14, 2008, I provided the Debtors with a spreadsheet calculating Circuit City Stores West Coast Inc.'s California sales tax deductions for bad debt losses on taxable sales for the period of April 1, 2005 through October 31, 2008 (the "Deductions"). It is my understanding that Circuit City Stores West Coast Inc. took these Deductions on its Q4 2008 State, Local and District Sales and Use Tax Return on line 10a1.

7. On December 1, 2009, I filed a California sales tax refund claim for bad debt losses on taxable sales for Circuit City Stores West Coast, LLC for the period of April 1, 2005 through September 30, 2009.

8. On March 19, 2010, I filed a second California sales tax refund claim for bad debt losses on taxable sales for Circuit City Stores West Coast, LLC for the period of October 1, 2009 through December 31, 2009 (collectively, the "Refund Claims").

9. On March 24, 2010, I e-mailed Larry Brammer and Roberta Cornell, BOE representatives with responsibility regarding Circuit City's tax issues, some documentation that my supervising attorney at Akerman, Peter Larsen, told me the BOE requested during a March 11, 2010 face to face meeting related to the BOE Claims and the Refund Claims. Included in the attachments to my March 24, 2010 e-mail were the following: (i) a copy of refund claims for the periods of April 1, 2005 through September 30, 2009 and October 1, 2009 through December 31, 2009, (ii) summaries of Claim No. 13186 and Claim No. 13187, and (iii) a spreadsheet calculating an annual sales tax deduction for bad debt losses on taxable sales using a high level alternative method to corroborate the Debtors entitlement to the Deductions.

10. On May 25, 2010, I e-mailed Cindy Burba (BTSL, Technical Advisor to OH Administrator, and who reports to Larry Brammer) to follow up on the documentation that I sent



to Larry Brammer and Roberta Cornell on March 24, 2010, and to see if they had any questions about the materials or if the BOE needed additional documentation to come to a overall settlement on all issues. In a phone conference that same day, Ms. Burba indicated that she needed the fourth quarter sales tax return for 2008, a copy of the refund claim that included Q2 2005, and the account level spreadsheet calculating the average taxable percentage used in the spreadsheet submitted to the auditor by the Debtors on or about October 1, 2009.

11. On May 26, 2010, I e-mailed Cindy Burba the documents she requested in the May 25, 2010 phone conference. On June 16, 2010 and July 20, 2010, I followed up with Ms. Burba by e-mail regarding the May 26th e-mail to make sure the BOE had received all the information it required from the Debtors. Ms. Burba did not respond by e-mail to any of my e-mails until August 20, 2010.

12. On August 19, 2010, I again e-mailed Ms. Burba to follow up on my May 26th e-mail and stated as follows:

On May 26, 2010, we had sent you documentation to support Circuit City's bad debt sales tax credits claimed on Circuit City's Q4 2008 sales tax return. **Since that time, we learned from Circuit City's bankruptcy counsel that, on March 31, 2010, the Bankruptcy Court granted Circuit City's objection to the bankruptcy claim related to these credits. Thus, the bankruptcy court disallowed the claim in its entirety. Based on this ruling, it is our understanding that there is no longer a pending audit assessment with regards to these credits.** The auditor (Zoila Saquicela) who was reviewing these credits wanted to close out the reaudit and wanted to know if we had reached a resolution with the Sacramento office with regards to the credits. We wanted to confirm with you before responding to the auditor that it is our understanding that the assessment related to these claims has been removed based on the bankruptcy court's actions.

(emphasis added). A true and correct copy of my August 19, 2010 e-mail is attached hereto as Exhibit A.

13. On August 20, 2010, Ms. Burba sent e-mail correspondence to Mr. Larsen and me

wherein she informed us that she forwarded my August 19<sup>th</sup> e-mail to Larry Brammer and that Larry Brammer will discuss the issue with Irvin Cooke, BOE's auditor supervisor.

14. On August 31, 2010, I explained in an e-mail to Zoila Saquicela, BOE's auditor (whose supervisor is Irvin Cooke), that we were waiting to hear back from Larry Brammer before responding to Zoila Saquicela's e-mail. On August 31, 2010, Mr. Cooke e-mailed me stating that "I have instructed the auditor (Zoila Saquicela) to allow 100% of the Bad Debt deduction in the re-audit. I spoke to Ms. Cindy Burba (BTS1) at HQ who works for Mr. Larry Brammer." A true and correct copy of the August 31, 2010 e-mail is attached as Exhibit B.

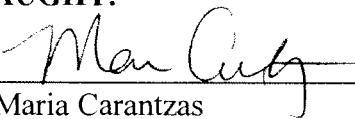
15. On October 8, 2010, Zoila Saquicela sent me an e-mail requesting that I forward her any written documentation to verify whether the assessment that has been removed relates to Circuit City Stores West., Acct. # SR OHB 99-487429.

16. On October 11, 2010, I e-mailed Zoila Saquicela a copy of the Order Sustaining Debtors' Sixty-Eighth Omnibus Objection To Claims (Disallowance Of Certain Late Claims) (the "Expungement Order"). A true and correct copy of the Carantzas October 11, 2010 e-mail is attached as Exhibit C. That same day, Ms. Saquicela confirmed receipt of the Expungement Order by e-mailing me to inform me that she attached the bankruptcy court's order to the reaudit report for further review. A true and correct copy of the Saquicela e-mail is attached as Exhibit D.

17. On November 10, 2010, Zoila Saquicela sent me an e-mail stating that "I want to let you know that our bankruptcy auditor, Mr. Ken Parson is dealing with the issue of our priority claim and has advised me at this point not to pursue the reaudit until further notice. Therefore, no adjustments were made for the bad debts deductions claimed during 7/1/05 through 11/9/08, and I have indicated the same to our Refund Section-Petition."

18. In all of my communications with the BOE, I have not had a single discussion about the prospect of a consensual allowance of the Disallowed Claim. Moreover, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to deem the Disallowed Claim as timely filed. Similarly, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to stay the time period in which the BOE would be required to reconsider the Expungement Order.

**FURTHER AFFIANT SAYETH NAUGHT.**



Maria Carantzas  
Shareholder  
Akerman Senterfitt  
50 N. Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Phone: (904) 798-3700  
Fax: (904) 798-3730

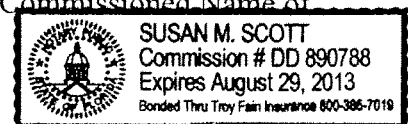
STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF DUVAL                )

The foregoing instrument was sworn to and subscribed before me this 27<sup>th</sup> day of June, 2011 by Maria Carantzas, who is:

- ☒ personally known to me; or  
☐ produced a driver's license issued by the \_\_\_\_\_ Department of Highway Safety and Motor Vehicles as identification; or  
☐ produced the following identification: \_\_\_\_\_

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(Print, Type or Stamp Commissioned Name of  
Notary Public)



**Carantzas, Maria (Sh-Jax)**

---

**From:** Burba, Cindy [Cindy.Burba@boe.ca.gov]  
**Sent:** Friday, August 20, 2010 2:58 PM  
**To:** Carantzas, Maria (Sh-Jax)  
**Cc:** Larsen, Peter (Sh-Jax)  
**Subject:** RE: Circuit City

Marla,

I have given your question to my supervisor, Larry Brammer, and he will discuss the issue with the Auditor's supervisor next week. Please hold off on responding to the auditor until Larry has had a chance to look into this. Thank you.

Cindy Burba, BTS I  
Technical Advisor to OH Administrator  
(916) 227-6677  
(916) 227-6641 (fax)

---

**From:** maria.carantzas@akerman.com [mailto:maria.carantzas@akerman.com]  
**Sent:** Thursday, August 19, 2010 12:09 PM  
**To:** Burba, Cindy  
**Cc:** peter.larsen@akerman.com  
**Subject:** Circuit City

Cindy:

On May 26, 2010, we had sent you documentation to support Circuit City's bad debt sales tax credits claimed on Circuit City's Q4 2008 sales tax return. Since that time, we learned from Circuit City's bankruptcy counsel that, on March 31, 2010, the Bankruptcy Court granted Circuit City's objection to the bankruptcy claim related to these credits. Thus, the bankruptcy court disallowed the claim in its entirety. Based on this ruling, it is our understanding that there is no longer a pending audit assessment with regards to these credits. The auditor (Zolla Saquicela) who was reviewing these credits wanted to close out the reaudit and wanted to know if we had reached a resolution with the Sacramento office with regards to the credits. We wanted to confirm with you before responding to the auditor that it is our understanding that the assessment related to these claims has been removed based on the bankruptcy court's actions.

Please let us know if you have any questions.

Thanks.

Maria



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8/20/2010

CIRCULAR 230 NOTICE: To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

---

Akerman Senterfitt  
50 N. Laura Street  
Suite 2500  
Jacksonville, Florida 32202  
tel: 904.598.8608  
fax: 904.798.3730  
maria.carantzas@akerman.com

8/20/2010

**Carantzas, Maria (Sh-Jax)**

---

**From:** Cooke, Irvin [Irvin.Cooke@boe.ca.gov]  
**Sent:** Tuesday, August 31, 2010 12:39 PM  
**To:** Carantzas, Maria (Sh-Jax); Saquicela, Zoila  
**Subject:** RE: CCS audit write-up

Ms. Carantzas:

I have instructed the auditor (Zoila Saquicela) to allow 100% of the Bad Debt deduction in the re-audit. I spoke to Ms. Cindy Burba (BTS1) at HQ who works for Mr. Larry Brammer.

Irvin J. Cooke  
**Supervising Tax Auditor**  
State of California  
Board of Equalization  
485 Lexington Avenue - Suite 400  
New York, N.Y. 10017  
Office (212) 697-4680  
Direct (212) 551-4083  
Cell (917) 287-0996  
Fax (212) 697-5146  
[irvin.cooke@boe.ca.gov](mailto:irvin.cooke@boe.ca.gov)

---

**From:** maria.carantzas@akerman.com [mailto:maria.carantzas@akerman.com]  
**Sent:** Tuesday, August 31, 2010 12:25 PM  
**To:** Saquicela, Zoila  
**Cc:** Cooke, Irvin  
**Subject:** RE: CCS audit write-up

I just wanted to let you know that I am waiting to hear back from Larry Brammer before responding to your email. My contact indicated that Larry would be contacting the audit supervisor this week.

---

**From:** Saquicela, Zoila [mailto:Zoila.Saquicela@boe.ca.gov]  
**Sent:** Thursday, August 19, 2010 11:44 AM  
**To:** Carantzas, Maria (Sh-Jax)  
**Cc:** Cooke, Irvin  
**Subject:** FW: CCS audit write-up

Good Morning Ms. Carantzas,

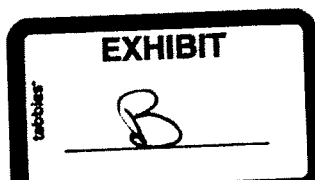
I want to follow up on your email dated 4/27/10. Have you reach a resolution on the claimed bad debt deductions with Larry Brammer in Sacramento?

I have been instructed to close out the reaudit so please let me know as soon as possible.

Thank you.  
Zoila

---

**From:** Cooke, Irvin  
**Sent:** Tuesday, April 27, 2010 10:42 AM  
**To:** 'maria.carantzas@akerman.com'  
**Cc:** Saquicela, Zoila  
**Subject:** RE: CCS audit write-up



**Carantzas, Maria (Sh-Jax)**

---

**From:** Carantzas, Maria (Sh-Jax)  
**Sent:** Monday, October 11, 2010 11:36 AM  
**To:** 'Saquicela, Zoila'  
**Cc:** Cooke, Irvin  
**Subject:** RE: CCS audit write-up  
**Attachments:** Order Sustaining Debtors' Sixty-Eighth Omnibus Objection (JA568634).PDF

Zoila:

As requested, attached is a copy of the bankruptcy court's order granting Circuit City's objection to the State of California's claim (Claim #13049--see the ninth page of the attached document). This claim related in part to the sales tax bad debt credit that Circuit City claimed.

Please let me know if you have any questions or need anything else.

Thanks.

Maria

---

**From:** Saquicela, Zoila [mailto:Zoila.Saquicela@boe.ca.gov]  
**Sent:** Friday, October 08, 2010 1:50 PM  
**To:** Carantzas, Maria (Sh-Jax)  
**Cc:** Cooke, Irvin  
**Subject:** FW: CCS audit write-up

Good Afternoon Ms. Carantzas,

On your email dated 8/19/10 to Cindy Burba, BTSI you indicated that the assessment related to the bad debts have been removed based on the bankruptcy court's actions. Please forward me any written documentation to verify whether the assessment that has been removed relates to Circuit City Store Wst., Acct. # SR OHB 99-487429.

Thank you.  
Zoila

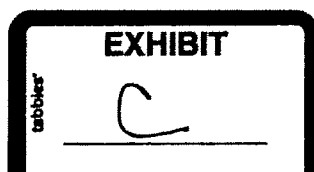
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**From:** Cooke, Irvin  
**Sent:** Tuesday, August 31, 2010 12:39 PM  
**To:** 'maria.carantzas@akerman.com'; Saquicela, Zoila  
**Subject:** RE: CCS audit write-up

Ms. Carantzas:

I have instructed the auditor (Zoila Saquicela) to allow 100% of the Bad Debt deduction in the re-audit. I spoke to Ms. Cindy Burba (BTS1) at HQ who works for Mr. Larry Brammer.

Irvin J. Cooke  
Supervising Tax Auditor  
State of California  
Board of Equalization  
485 Lexington Avenue - Suite 400



**Carantzas, Maria (Sh-Jax)**

---

**From:** Saquicela, Zoila [Zoila.Saquicela@boe.ca.gov]  
**Sent:** Monday, October 11, 2010 11:51 AM  
**To:** Carantzas, Maria (Sh-Jax)  
**Cc:** Cooke, Irvin  
**Subject:** RE: CCS audit write-up

Good Morning Ms. Carantzas,

I reviewed the attached bankruptcy court's order, and will attach it to the reaudit report for further review.

Thank you.  
Zoila

---

**From:** maria.carantzas@akerman.com [mailto:maria.carantzas@akerman.com]  
**Sent:** Monday, October 11, 2010 11:36 AM  
**To:** Saquicela, Zoila  
**Cc:** Cooke, Irvin  
**Subject:** RE: CCS audit write-up

Zoila:

As requested, attached is a copy of the bankruptcy court's order granting Circuit City's objection to the State of California's claim (Claim #13049--see the ninth page of the attached document). This claim related in part to the sales tax bad debt credit that Circuit City claimed.

Please let me know if you have any questions or need anything else.

Thanks.

Maria

---

**From:** Saquicela, Zoila [mailto:Zoila.Saquicela@boe.ca.gov]  
**Sent:** Friday, October 08, 2010 1:50 PM  
**To:** Carantzas, Maria (Sh-Jax)  
**Cc:** Cooke, Irvin  
**Subject:** FW: CCS audit write-up

Good Afternoon Ms. Carantzas,

On your email dated 8/19/10 to Cindy Burba, BTSI you indicated that the assessment related to the bad debts have been removed based on the bankruptcy court's actions. Please forward me any written documentation to verify whether the assessment that has been removed relates to Circuit City Store Wst., Acct. # SR OHB 99-487429.

Thank you.  
Zoila

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**From:** Cooke, Irvin  
**Sent:** Tuesday, August 31, 2010 12:39 PM

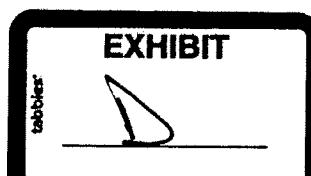




EXHIBIT E

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)

IN RE: )  
)  
CIRCUIT CITY STORES, INC., *et al.*, ) Case No. 08-35653 (KRH)  
) (Chapter 11)  
) Jointly Administered  
Debtors. )

AFFIDAVIT OF H. TIMOTHY GILLIS IN SUPPORT OF LIQUIDATING TRUSTEE'S  
RESPONSE IN OPPOSITION TO STATE OF CALIFORNIA, STATE BOARD OF  
EQUALIZATION'S MOTION TO RECONSIDER

STATE OF FLORIDA )  
) ss:  
COUNTY OF DUVAL )

H. TIMOTHY GILLIS, being duly sworn, deposes and says:

1. I am a shareholder of the firm Akerman Senterfitt ("Akerman"), which prior to the confirmation of the *Second Amended Plan* was employed by the debtors in the above-captioned cases (collectively, the "Debtors"), in the ordinary course of their business pursuant to the Court's *Order Granting Debtors' Motion For Order Pursuant To Bankruptcy Code Sections 105(A), 327, 330 And 331 Authorizing Debtors To Employ Professionals Utilized In The Ordinary Course Of Business*, primarily to perform tax consulting services and representation. Akerman continues to be employed by the Circuit City Stores, Inc. Liquidating Trust (the "Trust") for the same purpose, continuing Akerman's involvement in several ongoing tax matters. I am one of the Akerman attorney responsible for providing services for the Trust, and am familiar with all of the Trust's tax related matters for which Akerman is performing services. My Akerman colleagues Pete Larsen, Maria Carantzas, and I have been the primary points of contact between the Debtors, the Trust and the State of California, State Board of Equalization ("BOE").

2. I make this Affidavit based on my personal knowledge and my review of the books, records, and documents prepared and maintained by Akerman in the ordinary course of its business. I have become familiar with the manner and method in which Akerman maintains its books and records in its regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted. I have personal knowledge that the facts stated in this Affidavit are true. I am authorized by Akerman and the Trust to make this Affidavit.

3. On and before October 28, 2010, I helped my supervising attorney at Akerman, Peter Larsen, Esq., prepare correspondence (the "October 28<sup>th</sup> Letter") sent to the State of California, State Board of Equalization (the "BOE"), wherein Mr. Larsen stated that BOE's Claim No. 13049 (the "Disallowed Claim") was filed late and was disallowed by an Order entered by the bankruptcy court on March 31, 2010. I have never seen and am not aware of any response by the BOE to the October 28th letter.

4. I was asked by Mr. Larsen on December 7, 2010 to contact BOE in an effort to follow up on a potential global resolution of all issues with the BOE.<sup>1</sup> Accordingly, I thereafter contacted Mr. Brammer regarding BOE's response to the October 28<sup>th</sup> Letter. During that phone conference in early January, 2011, I was told by Mr. Brammer that Ken Parsons was taking over the Circuit City matter on behalf of the BOE.

5. I then called Mr. Parsons on or about January 12, 2011, and was informed by Mr. Parsons that Ms. Victoria Baker, an in-house attorney at the BOE, had been put in charge of the Circuit City matter. Accordingly, on January 12, 2011, I called Ms. Baker and told her that

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<sup>1</sup> All capitalized terms shall have the same meaning as defined in the Response unless otherwise defined herein.

Circuit City was interested in resolving all issues with the BOE. During that phone conference, I told Ms. Baker that the Disallowed Claim had been expunged. She advised me that BOE had retained Todd Duffy, Esq. to represent the BOE as its outside bankruptcy counsel to deal with the Disallowed Claim.

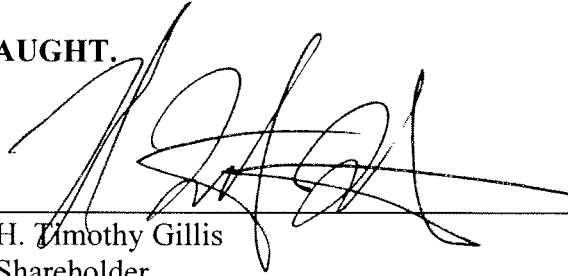
6. After my conversation with Ms. Baker, I promptly contacted Mr. Duffy and was advised by Mr. Duffy that the BOE was preparing to file a motion to set aside the Bankruptcy Court's Order expunging the Disallowed Claim. I advised Mr. Duffy during that phone conference that Circuit City strongly disagreed with the argument the BOE advanced in support of setting aside the Expungement Order.

7. In late April 2011, I contacted Mr. Duffy to outline the terms upon which Circuit City would be willing to resolve all issues with the BOE, including two refund claims that Circuit City had filed with BOE. The settlement offer included a lump sum payment for the settlement of all claims, but did not discuss any allocation among the BOE Claims.

8. On May 19, 2011, I sent Mr. Duffy an e-mail with a formal settlement offer on behalf of the Trustee incorporating the terms of the settlement previously discussed with Mr. Duffy. The settlement offer again did not contain any allocation on account of any of the BOE Claims.

9. In all of my communications with the BOE, I have never had a single discussion about the prospect of the consensual allowance of the Disallowed Claim. Moreover, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to deem the Disallowed Claim as timely filed. Similarly, I have never conveyed to the BOE or otherwise any agreement on behalf of either the Debtors or the Trust to stay the time period in which the BOE would be required to reconsider the Expungement Order.

**FURTHER AFFIANT SAYETH NAUGHT.**



H. Timothy Gillis  
Shareholder  
Akerman Senterfitt  
50 N. Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Phone: (904) 798-3700  
Fax: (904) 798-3730


STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF DUVAL                )

The foregoing instrument was sworn to and subscribed before me this 27 day of June, 2011, by H. Timothy Gillis, who is:

- ☒ personally known to me; or
- ☐ produced a driver's license issued by the \_\_\_\_\_ Department of Highway Safety and Motor Vehicles as identification; or
- ☐ produced the following identification: \_\_\_\_\_



NOTARY PUBLIC, STATE OF FLORIDA

(Print, Type or Stamp Name of Notary Public)  MARY BETH WIMMER  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE103574  
Expires 8/26/2015

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

IN RE: CIRCUIT CITY STORES, INC.,  
*et al.*,  
Debtors.

Case No. 08-35653  
Chapter 11  
Jointly Administered

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EXPORT DEVELOPMENT CANADA

Movant,

CONTESTED MATTER

v.

CIRCUIT CITY STORES, INC.,  
*et al.*,

Respondents.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Upon consideration of the Motion for Allowance of the Late Filed Administrative Expense Claim of Export Development Canada ("EDC") (Docket No. 2960) (the "Motion"), the Debtors' objections thereto (Docket Nos. 3131, 3154 and 6252) (collectively, the "Objection") and EDC's replies thereto (Docket Nos. 3152, 4186 and 6264) (collectively, the "Reply"); and the Court having reviewed the Motion, the Objection, and the Reply; and the Court having conducted an evidentiary hearing on January 14, 2010 (the "Hearing"), at which the Court considered the arguments advanced by EDC and the Debtors; and upon the record herein, and after due deliberation thereon; and good and sufficient cause appearing therefore, the Court hereby

**FINDS, DETERMINES, AND CONCLUDES THAT:<sup>1</sup>**

**BANKRUPTCY CASE BACKGROUND**

This is a Chapter 11 case filed by a national retailer. Circuit City Stores, Inc. (“Circuit City”) and certain of its subsidiaries (collectively, the “Debtors”)<sup>2</sup> filed voluntary petitions for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”) on November 10, 2008 (the “Petition Date”). Circuit City was a specialty retailer of consumer electronics. The Debtors have continued as debtors in possession in these jointly administered Chapter 11 cases pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the “Creditors Committee”). To date, no trustee or examiner has been appointed in these Chapter 11 cases. On January 16, 2009, the Court authorized the Debtors to conduct going out of business sales at the Debtors’ remaining 567 store locations pursuant to an agency agreement (the “Agency Agreement”) between the Debtors and a joint venture, as agent (the “Agent”). The Agent commenced the going out of business sales pursuant to the Agency Agreement on January 17, 2009; and the going out of business sales were concluded on March 8, 2009,

On September 29, 2009, the Debtors and the Creditors Committee filed the First Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and Its Affiliated Debtors and Debtors in Possession and Its Official Committee of Creditors Holding General Unsecured

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<sup>1</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

<sup>2</sup> The Debtors are Circuit City Stores, Inc., Circuit City Stores West Coast, Inc., InterTAN, Inc., Ventoux International, Inc., Circuit City Purchasing Company, LLC, CC Aviation, LLC, CC Distribution Company of Virginia, Inc., Circuit City Properties, LLC, Kinzer Technology, LLC, Abbott Advertising Agency, Inc., Patapasco Designs, Inc., Sky Venture Corp., Prahs, Inc.(n/a), XSStuff, LLC, Mayland MN, LLC, Courchevel, LLC, Orbyx Electronics, LLC, and Circuit City Stores PR, LLC. The Court entered an order on November 10, 2008, granting the Debtors’ motion for joint administration of these bankruptcy cases.

Claims (the “Plan”). The associated disclosure statement (the “Disclosure Statement”) was approved on September 24, 2009. Confirmation of the Plan is currently scheduled for March 8, 2010. Generally, the Plan provides for the liquidation of the Debtors under Chapter 11 of the Bankruptcy Code.

#### JURISDICTION AND VENUE

The Court has subject-matter jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the general order of reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (C), and (O). Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### THE PARTIES

EDC is a provider of credit insurance to Canadian companies that export goods to companies located in the United States. EDC provided credit insurance to TechCraft Manufacturing, Inc. (“TechCraft”) pursuant to which EDC insured TechCraft’s prepetition sales to the Debtors.

#### THE BAR DATE FOR FILING 503(b)(9) CLAIMS

On November 12, 2008, the Court entered an Order Establishing Bar Date for Filing Requests for Payment of Administrative Expense Claims Under Bankruptcy Code Sections 105 and 503(b)(9) and Approving Form, Manner and Sufficiency of Notice of the Bar Date Pursuant to Bankruptcy Rule 9007 (Docket No. 107) (the “503(b)(9) Bar Date Order”). The 503(b)(9) Bar Date Order approved the form and substance of the 503(b)(9) bar date notice.<sup>3</sup> The 503(b)(9) Bar Date Order and 503(b)(9) Bar Date Notice established December 19, 2008 as the bar date for

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<sup>3</sup> The 503(b)(9) Bar Date Notice was attached as Exhibit A to the 503(b)(9) Bar Date Order (the “503(b)(9) Bar Date Notice”).

filing proofs of claim asserting administrative priority under § 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Bar Date”). The 503(b)(9) Bar Date Order provided in relevant part:

4. The Section 503(b)(9) Bar Date Notice shall be mailed by first class mail, postage prepaid to the Debtors’ vendors and suppliers of goods. . . .

5. The Debtors are permitted, but not required, to publish notice of the Section 503(b)(9) Bar Date as set forth in the Motion.

. . .

7. Any holder of a Section 503(b)(9) Claim that fails to file a Section 503(b)(9) Claim Request or a Section 503(b)(9) Motion by the Section 503(b)(9) Bar Date and in accordance with the procedure set forth in this Order is forever barred, estopped and permanently enjoined from asserting its Section 503(b)(9) Claim against the Debtors, their estates, or the property of any of them, and such holder shall not be entitled to receive any distribution in these bankruptcy cases on account of such Section 503(b)(9) Claim or receive further notices regarding such Section 503(b)(9) Claim, absent further order of this Court.

. . .

12. Any Section 503(b)(9) Claim Request or Section 503(b)(9) Motion that is not timely filed and served in accordance with this Order on or before the Section 503(b)(9) Bar Date, so as to be actually RECEIVED by the deadline and in the manner set forth herein, shall be disallowed, and the holder of such Section 503(b)(9) Claim shall be forever barred, estopped, and permanently enjoined from asserting such Section 503(b)(9) Claim against the Debtors, their estates, or the property of any of them, and such holder shall not be entitled to receive any distribution in these bankruptcy cases on account of such Section 503(b)(9) Claim or receive further notices regarding such Section 503(b)(9) Claim, absent further order of this Court.

503(b)(9) Bar Date Order, pp. 3-4, 7.

The 503(b)(9) Bar Date Notice provided in relevant part:

**CONSEQUENCES OF FAILURE TO FILE SECTION 503(b)(9) CLAIM REQUEST**

**ANY PERSON OR ENTITY HOLDING A SECTION 503(b)(9) CLAIM THAT FAILS TO FILE A SECTION 503(b)(9) CLAIM REQUEST ON OR BEFORE THE BAR DATE<sup>4</sup> SHALL BE FOREVER BARRED AND ESTOPPED FROM ASSERTING A SECTION 503(b)(9) CLAIM AGAINST THE DEBTORS, THEIR ESTATES, OR THE PROPERTY OF ANY OF THEM, ABSENT FURTHER ORDER OF THE COURT.**

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<sup>4</sup> The 503(b)(9) Bar Date Notice also provided notice that the 503(b)(9) Bar Date was 5:00 p.m., Pacific Time, on December 19, 2008.



Bar Date Notice, p. 5.

On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC (“KCC”) as claims, noticing, and balloting agent for the Debtors in these Chapter 11 cases in accordance with 28 U.S.C. § 156(c). On or before November 19, 2008, TechCraft was served with a copy of the 503(b)(9) Bar Date Notice and a 503(b)(9) Claim Request Form (together, the “Bar Date Notice”). See Affidavit of Service of KCC (Docket No. 358).<sup>5</sup> In addition, the Debtors published the 503(b)(9) Bar Date Notice in The New York Times (Docket No. 549), The Wall Street Journal (Docket No. 548) and The Richmond Times-Dispatch (Docket No. 547).<sup>6</sup> By no later than December 11, 2008, TechCraft had actually received a copy of the Bar Date Notice. The Debtors did not serve EDC with a copy of the Bar Date Notice because EDC was not a known or reasonably ascertainable creditor and the Debtors had not conducted any business nor had any contact with EDC prior to the Petition Date.

On December 11, 2008, eight days prior to the 503(b)(9) Bar Date, TechCraft forwarded a copy of the Bar Date Notice to EDC by electronic mail (the “TechCraft E-mail”). EDC does not dispute receiving the Bar Date Notice from TechCraft. Upon receipt, EDC uploaded the Bar Date Notice onto its computer system. Both the 503(b)(9) Bar Date Notice and 503(b)(9) Claim Request Form conspicuously included the 503(b)(9) Bar Date in more than one location. Thus, both TechCraft and EDC had actual notice of the deadline prior to the 503(b)(9) Bar Date.

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<sup>5</sup> The Court may take judicial notice of filings and pleadings in the underlying Chapter 11 cases. See *Pathnet, Inc. v. Nortel Networks, Inc. (In re Pathnet, Inc.)*, 2002 Bankr. LEXIS 1262, at \*7 (Bankr. E.D. Va. Aug. 14, 2002) (finding that a court is entitled to take judicial notice of pleadings); *Fletcher v. U.S.*, 174 F.2d 373, 376 (4th Cir. 1949) (“Certainly a judge may take cognizance of the records of his own court.”), *cert. denied* 338 U.S. 851 (1948).

<sup>6</sup> The 503(b)(9) Bar Date also was clearly identified and posted by KCC on its website at [www.kccllc.net/circuitcity](http://www.kccllc.net/circuitcity) (the “KCC Website”) under the section of the KCC Website entitled “Important Dates, Deadlines & Documents” on November 13, 2008. The items on the “Important Dates, Deadlines & Documents” section appear in chronological order and the 503(b)(9) Bar Date is the fourth item on the list. Additionally, on November 13, 2008, a link to the 503(b)(9) Bar Date Notice was posted next to the 503(b)(9) Bar Date in the “Important Dates, Deadlines & Documents” section of the KCC Website. Further, on November 19, 2008, a link to the 503(b)(9) proof of claim form was posted next to the 503(b)(9) Bar Date in the “Important Dates, Deadlines & Documents” section of the KCC Website and at the top of the KCC Website under the heading “503(b)(9) Proof Of Claim Form.”

Due process requires that the notice of the applicable bar date be “reasonably calculated, under the circumstances, to apprise an interested party of the pendency of the action.” *In re Snug Enters., Inc.*, 169 B.R. 31, 33 (Bankr. E.D. Va. 1994). In the Debtors’ cases, sufficient notice was given such that due process rights were met. Moreover, there is no doubt that TechCraft and EDC received the Bar Date Notice and that both TechCraft and EDC had actual knowledge of the 503(b)(9) Bar Date well in advance of its expiration.

#### THE LATE FILED CLAIM

Prior to the 503(b)(9) Bar Date, TechCraft filed an application for payment of its claim against the Debtors with EDC (the “Application for Payment”). EDC’s claims unit processed TechCraft’s Application for Payment. EDC ultimately paid TechCraft an agreed upon percentage of its claim. The Application for Payment included a notation in the risk category portion of the form that Circuit City had filed for bankruptcy on November 10, 2008. Because the Application for Payment involved a bankruptcy case, EDC’s claims department immediately notified its recovery unit and the person responsible for handling all bankruptcy matters on behalf of EDC (the “EDC Representative”) about the Application for Payment.

In the TechCraft E-mail, TechCraft offered to assist EDC in connection with the 503(b)(9) Bar Date Notice and 503(b)(9) Claim Request Form. EDC did not respond to TechCraft’s offer of assistance. While EDC’s claims unit notified its recovery unit about the Application for Payment and about the related Circuit City bankruptcy case, it failed to notify the EDC recovery unit or the EDC Representative that EDC had received the Bar Date Notice. The EDC Representative had full access to EDC’s computer system. The uploaded information available on EDC’s computer system clearly set forth the 503(b)(9) Bar Date and included the provided

claim form. However, the EDC Representative did not review the information that had been uploaded onto EDC's computer system by the claims unit.

Prior to the 503(b)(9) Bar Date, the EDC Representative had been directed by counsel for the Debtors to consult the KCC Website, which contained information about the 503(b)(9) Bar Date and the claim form.<sup>7</sup> The EDC Representative testified that she did in fact visit the KCC Website as she had been directed by Debtors' counsel. The EDC Representative testified further that Circuit City was her first bankruptcy case involving section 503(b)(9) of the Bankruptcy Code and that she was not familiar with that provision of the Bankruptcy Code at the time she visited the KCC Website. Accordingly, the EDC Representative did not appreciate the significance of the information with which she was provided on the KCC Website pertaining to the 503(b)(9) Bar Date.

Neither TechCraft nor EDC timely filed a 503(b)(9) claim against Debtors. Although EDC could have requested that TechCraft file a claim, including a 503(b)(9) claim, EDC did not choose to do so. After EDC paid TechCraft, TechCraft assigned its claim to EDC. Thereafter, EDC filed a 503(b)(9) administrative expense claim on January 28, 2009 – forty (40) days after the 503(b)(9) Bar Date had expired.

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<sup>7</sup> The Court rejects EDC's contention that its failure to timely file its 503(b)(9) claim was somehow the result of communications it had with counsel for the Debtors. Counsel for debtors have no duty to respond to creditor inquiries regarding filing deadlines. See *In re Jackson*, 98 B.R. 738, 741 (Bankr. D. Md. 1986) (stating that debtor's counsel is under no duty to respond to creditor inquiries regarding filing deadlines); see also *In re First Software Corp.*, 97 B.R. 711, 719 (Bankr. D. Mass. 1988) (affirming the bankruptcy court's rejection of claimant's motion to extend time for filing and stating that debtor's counsel was under no duty to make the claimant aware of the filing deadline). But even if some duty on the part of Debtors' counsel did exist (which the Court concludes it did not), the e-mail exchange between Debtors' counsel and EDC was not in any way misleading. Rather, it was both informative and helpful in directing EDC to the KCC Website, which conspicuously contained the 503(b)(9) Bar Date and related notices and forms. Debtors' counsel's did not contribute in any way to EDC's neglect, and no actions of Debtors' counsel excuse EDC for its failure to timely file a 503(b)(9) claim.

### EDC FAILED TO ESTABLISH EXCUSABLE NEGLIGENCE

Bankruptcy Rule 3003(c) provides that “the court shall fix [in a Chapter 11 case] and for cause shown may extend the time within which proofs of claim . . . may be filed.” Fed. R. Bankr. P. 3003(c)(3). With respect to claims entitled to administrative priority, § 503(a) of the Bankruptcy Code provides that “[a]n entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.” 11 U.S.C. § 503(b). In addition, if the request for an extension under Bankruptcy Rule 3003(c)(3) or § 503(b) is made after the expiration of the bar date, a claimant must establish not only “cause,” but also that “the failure to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b).

“The requirement of a Bar Date in Chapter 11 enables the debtor . . . to establish the universe of claims with which it must deal and the amount of those claims.” *In re A.H. Robins Co.*, 129 B.R. 457, 459 (Bankr. E.D. Va. 1991). As Bar Dates in Chapter 11 bankruptcy cases serve such a very important purpose, courts do not allow claims filed by creditors after the bar date, absent special circumstances. *See In re Provident Hosp., Inc.*, 122 B.R. 683, 685 (D. Md. 1990), *aff’d*, 943 F.2d 49 (4th Cir. 1991) (unpublished opinion) (“Because [the claimant] did not timely file his bankruptcy claim after having been given constitutionally sufficient notice, his claim is barred under well-settled authority, 11 U.S.C. 1141(d) and Bankruptcy Rule 3003(c)(2).”).<sup>8</sup>

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<sup>8</sup> The necessity for the establishment of a bar date can no better be illustrated than by the Debtors' upcoming confirmation hearing. The Debtors must, as a condition for confirmation of their proposed Plan, be able to demonstrate their ability to pay, on the effective date, all of their administrative expenses. *See* 11 U.S.C. § 1129(a)(9). Accordingly, it is imperative that the Debtors know, at this point in their cases, the extent of those asserted expenses.

It is not uncommon for courts to disallow a proof of claim filed just a few days after a filing deadline. *See Thompson v. E.I. DuPont de Nemours & Co., Inc.*, 76 F.3d 530, 534 (4th Cir. 1996) (refusing to enlarge the period for filing a notice of appeal when the litigant mailed the notice three days prior to the expiration of the deadline but the notice did not arrive until three days after the expiration of the deadline). *See also In re Dishman*, 257 B.R. 780 781-83 (Bankr. E.D. Va. 2000) (refusing to enlarge time for filing of complaint where complaint was filed two days late due to a delay in mail delivery caused by inclement weather); *Avnet, Inc. v. Maxwell*, 2006 U.S. Dist. LEXIS 39425 (N.D. Ill. May 25, 2006) (refusing to accept late filed proof of claim where claim was faxed to claims agent on bar date and delivered by courier to claims agent one day after the bar date); *In re Yankee Distrib. Co.*, 53 B.R. 222, 223-24 (Bankr. D. Vt. 1985) (motion to allow late proof of claim was denied where proof of claim arrived one day after the bar date).

As the claimant seeking to file a combined proof of claim and request for payment of that claim as administrative expense after the court-ordered 503(b)(9) Bar Date, EDC bears the burden of proving excusable neglect. *In re Enron Corp.*, 419 F.3d 115, 121 (2d Cir. 2005); *see also Thompson v. E.I. DuPont de Nemours & Co., Inc.*, 76 F.3d 530, 534 (4th Cir. 1996) (“[T]he burden of demonstrating excusability lies with the party seeking the extension . . .”) (quoting *In re O.P.M. Leasing Serv., Inc.*, 769 F.2d 911, 917 (2d Cir. 1985)); *see generally In re Circuit City Stores, Inc.*, 2010 WL 56076, at \*5 (Bankr. E.D. Va. Jan. 6, 2010) (“If a ‘creditor’ wishes to be granted an administrative priority under § 503(b)(9), then the creditor must, first, file a proof of claim under § 501 [and Bankruptcy Rule 3003], second, have the claim allowed under § 502, and then, third, request administrative expense priority under § 503(a).”).

The Supreme Court has established a two-part test to determine whether a claimant's failure to act in accordance with the filing deadline was due to "excusable neglect." *Pioneer Inv. Servs. Co. v. Brunswick Ass'n Ltd. P'ship*, 507 U.S. 380, 395 (1993). Under the *Pioneer* framework, a court must first determine whether the claimant's failure to file in a timely manner was the result of neglect. *See id.* at 394; *see also Huennekens v. Marx (In re Springfield Contracting Corp.)*, 156 B.R. 761, 765 (Bankr. E.D. Va. 1993) (holding that the Supreme Court had established a two-part inquiry for determining whether a party's failure to act was due to "excusable neglect," the first question being whether the failure to act was due to neglect).

The Court finds that EDC's failure to timely file its claim was the result of its neglect. Neglect encompasses inaction caused by "inadvertence, mistake, or carelessness." *Pioneer*, 507 U.S. at 388. EDC timely received notice of the bar date deadline established in these cases, but, nevertheless, failed to timely file its claim.

The Court must next determine whether EDC's failure to timely file its 503(b)(9) claim was excusable. *See Pioneer*, 507 U.S. at 395. In *Pioneer*, the Supreme Court held that the determination of whether the claimant's neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* In this regard, the Supreme Court set forth four factors to be considered when considering a motion to allow a late-filed proof of claim under Rule 9006(b). Those factors include: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the claimant; and (4) whether the claimant acted in good faith. *Id.*

The "excusable neglect" standard is not an easy one to satisfy. *Thompson v. E.I. DuPont de Nemours & Co., Inc.*, 76 F.3d 530, 534 (4th Cir. 1996) ("'[E]xcusable neglect' is not easily

demonstrated, nor was it intended to be.”); *see also In re Best Products Co.*, 140 B.R. 353, 359 (S.D.N.Y. 1992) (characterizing the bar date as a court-imposed statute of limitation that is “peremptory”). As the Supreme Court discussed in *Pioneer*, “inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable neglect.’” 507 U.S. at 392; *see also Thompson*, 76 F.3d at 534; *In re Best Products Co., Inc.*, 140 B.R. at 358 (“Except when a known creditor is not listed on the schedules and hence fails to receive notice of the filing deadline, the bar date is strictly enforced.”) (citing *Wright v. Placid Oil Co.*, 107 B.R. 104, 106 (N.D. Tex. 1989)). “[E]ven upon a showing of ‘excusable neglect,’ whether to grant an enlargement of time still remains committed to the discretion of the district court.” *Thompson*, 76 F.3d at 532 n.2.

“The most important of the factors identified in *Pioneer* for determining whether ‘neglect’ is ‘excusable’ is the reason for the failure to file.” *Thompson*, 76 F.3d at 534. “[T]he four Pioneer factors do not carry equal weight; the excuse given for the late filing must have the greatest import. While prejudice, length of delay, and good faith might have more relevance in a close[] [sic] case, the reason-for-delay factor will always be critical to the inquiry.” *In re Enron Corp.*, 419 F.3d 115, 122-24 (2d Cir. 2005) (quoting *Graphic Commc’ns. Int’l Union v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5-6 (1st Cir. 2001)); *see also Pioneer*, 507 U.S. at 395 (stating that it is also significant whether or not the reason for the failure to file was “within the reasonable control of the movant”).

Administrative failure on the part of the claimant is insufficient to warrant a finding of “excusable neglect.” *See Thompson*, 76 F.3d at 534 (“[A] mere concession of palpable oversight or administrative failure generally has been held to fall short of the necessary showing. . . .”) (quoting *In re O.P.M. Leasing Serv., Inc.*, 769 F.2d 911, 917 (2d Cir. 1985)); *see also In re*

*Century Brass Products, Inc.*, 72 B.R. 68, 70 (Bankr. D. Conn. 1987) (holding that a “[d]elay resulting from a breakdown in creditor’s internal procedures . . . does not constitute excusable neglect within the meaning of Rule 9006(b)(2)” of the Federal Rules of Bankruptcy Procedure); *see also In re Figueroa*, 33 B.R. 298, 303 (Bankr. S.D.N.Y. 1983) (holding that courts generally refuse to grant relief when late filing is caused by internal breakdowns because a finding that a breakdown in internal procedures caused the noncompliance shows that the events were not beyond the control of the creditor). “Similarly, preoccupation or an excessive workload does not typically render a mistake excusable.” *In re Enron Corp.*, 419 F.3d 115, 126 (2d Cir. 2005) (citing *Pioneer*, 507 U.S. at 398 (noting that “we give little weight to the fact that counsel was experiencing upheaval in his law practice at the time of the bar date.”)); *see also In re Wilmoth*, 412 B.R. 791, 798-800 (Bankr. E.D. Va. 2009).

The Court concludes that EDC’s neglect was not excusable. Neither EDC’s lack of understanding of § 503(b)(9) of the Bankruptcy Code nor its administrative failure to act on the Bar Date Notice when EDC received notice of it constitutes excusable neglect. The Court finds that EDC’s failure to timely file its 503(b)(9) claim was the result of a breakdown in the internal procedures of EDC. For the foregoing reasons, the Court will disallow the late filed 503(b)(9) Claim filed by EDC.

A separate order shall be issued.

ENTERED: February 4, 2010

/s/ Kevin R. Huennekens  
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: 2/4/2010





1 of 59 DOCUMENTS

**In Re: WINN-DIXIE STORES, INC., Debtor. IRT PARTNERS, L.P., EQUITY  
ONE HUNTER'S CREEK, Plaintiffs-Appellants, Cross-Appellees, versus WINN-  
DIXIE STORES, INC., Defendant-Appellee, Cross-Appellant.**

**No. 09-12237**

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**639 F.3d 1053; 2011 U.S. App. LEXIS 8896; 54 Bankr. Ct. Dec. 166; 22 Fla. L.  
Weekly Fed. C 2019**

**April 29, 2011, Decided  
April 29, 2011, Filed**

**PRIOR HISTORY:** [\*1]

Appeals from the United States District Court for the Middle District of Florida. D.C. Docket No. 08-00391-CV-J-12, BKC Y No. 05-03817-3F1. IRT Partners, L.P. v. Winn-Dixie Stores, Inc. (In re Winn-Dixie Stores, Inc.), 414 B.R. 764, 2009 U.S. Dist. LEXIS 30681 (M.D. Fla., 2009)

**DISPOSITION:** AFFIRMED.

**COUNSEL:** For IRT Partners, L.P., Appellant: Elliot B. Kula, Kula & Samson, LLP, AVENTURA, FL.

For Equity One Hunter's Creek, Appellant: Elliot B. Kula, Kula & Samson, LLP, AVENTURA, FL; Mark D. Bloom, Elliot H. Scherker, Greenberg, Traurig, P.A., MIAMI, FL.

For Winn-Dixie Stores, Inc., Appellee: Stephen D. Busey, Smith, Hulsey & Busey, JACKSONVILLE, FL; Beau Bowin, Smith Hulsey & Busey, JACKSONVILLE, FL.

**JUDGES:** Before EDMONDSON, HILL and ALARCON, \* Circuit Judges.

\* Honorable Arthur L. Alarcon, United State Circuit Judge for the Ninth Circuit, sitting by designation.

**OPINION BY:** HILL

**OPINION**

HILL, Circuit Judge:

Appellants, IRT Partners, L.P. and Equity One, Inc., appeal the district court's order affirming the bankruptcy court's decision to sustain the debtor's, Winn-Dixie Stores, Inc., objections to appellants' attempt to amend their claims post-confirmation of the debtor's reorganization plan. <sup>1</sup> For the following reasons, we affirm the district court's order.

1 Winn-Dixie Stores, Inc., filed a cross-appeal contingent on our reversing the district court. Because we affirm the district [\*2] court's decision, we do not address the cross-appeal.

I.

This appeal arises out of a Chapter 11 proceeding commenced by Winn-Dixie Stores, Inc. ("Winn-Dixie"), in 2005. During the course of the proceedings, the bankruptcy court authorized Winn-Dixie to reject its leases with both appellants. After Winn-Dixie sent notices of rejection to appellants, each filed a proof of claim with the bankruptcy court on September 14 and October 31, 2005 respectively. <sup>2</sup> Winn-Dixie objected to these claims.

2 Although appellants filed a motion to extend the rejection claims bar date to November 15, 2005, no hearing was sought and no ruling made.

639 F.3d 1053; 2011 U.S. App. LEXIS 8896, \*;  
54 Bankr. Ct. Dec. 166; 22 Fla. L. Weekly Fed. C 2019

The bankruptcy court ruled on Winn-Dixie's objections, reducing appellants' original claims and disallowing any amounts exceeding the reduced claims, without objection, appearance, or appeal by appellants.

After notice to all interested parties, and without objection by either appellant, on November 9, 2006, the bankruptcy court entered an order confirming Winn-Dixie's reorganization plan, which provided that unsecured claims would be paid by distribution of new common stock issued by Winn-Dixie. On December 22, 2006, and January 9, 2007, Winn-Dixie distributed and [\*3] appellants accepted these shares of stock in satisfaction of their reduced original claims.

On January 5, 2007, each appellant filed an Amended Proof of Claim, which included the reduced original claim amount and additional claims for rejection damages. IRT Partners, L.P.'s original claim was for \$20,364.24, reduced to \$11,636.71, and its amended claim was for \$185,244.67. Equity One, Inc.'s original claim was for \$87,498.59, reduced to \$16,913.96, and its amended claim was for \$878,478.41. Winn-Dixie filed objections to the attempt to amend the reduced claims and the bankruptcy court sustained these objections, disallowing the amended claims.

## II.

In considering Winn-Dixie's objections to appellants' attempts to amend their claims, the bankruptcy court framed the issue as whether the doctrine of *res judicata* barred the amended claims, and held that it did. On appeal to the district court, appellants argued that this framing of the issue was a mistake of law, and that the correct legal question was under what conditions amendments to claims should be allowed under *In re International Horizons, Inc.*, 751 F.2d 1213 (11th Cir. 1985). Appellants argued that the bankruptcy court's failure to [\*4] apply *International Horizons'* five-pronged test for determining when a bankruptcy claim may be amended was reversible error.

The district court, however, agreed with the bankruptcy court that the legal issue on appeal was the *res judicata* effect of Winn-Dixie's confirmed reorganization plan. We agree. The question in this case is not when a claim may be amended in the general case - for which *International Horizons* provides a test - but rather whether a confirmed reorganization plan precludes subsequent efforts to amend prior claims - an issue not addressed by *International Horizons* because it did not involve an attempt to amend a claim *post-confirmation*.

Whether Winn-Dixie's confirmed reorganization plan is entitled to the preclusive effect of *res judicata* is the threshold issue in this case. If Winn-Dixie's reorganization plan is not entitled to *res judicata* effect, then *In-*

*ternational Horizons* might provide the applicable test for whether appellants' proposed amendments are permissible in this case. But the first question we must resolve is whether Winn-Dixie's reorganization plan is entitled to *res judicata* and precludes subsequent amendment of claims.

Section 4.3(g) of Winn-Dixie's [\*5] reorganization plan provides that distributions of its reorganized common stock were intended to be "in full satisfaction, settlement, release, and discharge of and in exchange of" allowed claims (emphasis added). Section 12.13 of the plan also provides that:

[A]ll consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims of any nature whatsoever against the Debtors . . . not limited to . . . debts of the kind specified in Section 502 of the Bankruptcy Code [which includes rejection damages] . . . [and] all Persons shall be precluded from asserting against the Debtors . . . any other or further claims, debts, rights, . . . based upon any act, omission, transaction, occurrence or other activity of any nature that occurred prior to the Effective Date [of the Reorganization Plan] . . . (emphasis added)

This language makes clear that, upon confirmation, the reorganization plan was intended to satisfy all claims - including those for rejection damages - and that appellants would be "precluded from asserting against the Debtors . . . any other or further claims" based on "any omission" that "occurred prior [\*6] to the Effective Date of the [Plan]." It is clear that the plan undertook to extinguish all claims, substituting for them a new contractual relationship between Winn-Dixie and its creditors, defined by the terms of the plan itself. The only question is whether the law permits such a result.

At least one circuit has held that it does. In *Holstein v. Brill*, 987 F.2d 1268 (7 Cir. 1993), the Seventh Circuit held that confirmation of a reorganization plan is equivalent to a final judgment in an ordinary civil action, which extinguishes the claim and substitutes for it a judgment, which defines the new obligations of the parties. The effect of the confirmation of the plan, the Seventh Circuit wrote, is that "each claimant gets a 'new' claim, based upon whatever treatment is accorded to it in the plan itself." *Id.* at 1270. As a result, reasoned the court, *res judicata* should preclude post-confirmation amendments absent some "compelling reason." *Id.*

639 F.3d 1053; 2011 U.S. App. LEXIS 8896, \*;  
54 Bankr. Ct. Dec. 166; 22 Fla. L. Weekly Fed. C 2019

We agree with this reasoning and result. Although amendment should be freely granted prior to confirmation - under the guidance of *International Horizons* - amendment of a creditor's claim after confirmation of a plan can render a plan infeasible [\*7] or alter the distribution to other creditors. Therefore, we hold that post-confirmation amendment - while not prohibited - is not favored, and only the most compelling circumstances justify it. In the absence of such compelling reasons, a confirmed reorganization plan should be accorded *res judicata* effect on a creditor's subsequent attempt to amend his claim.

Therefore, confirmation of the Winn-Dixie reorganization plan precludes appellants' post-confirmation attempt to amend their claims unless there are compelling circumstances that militate in favor of the amendments. We find none.

Appellants attempted to amend their claims after they had been reduced by the Bankruptcy Court *without objection* or appeal by them, and after Winn-Dixie's reorganization plan had been confirmed *without objection* by them. The reorganization plan language explicitly sets forth that acceptance of the new common stock constitutes full satisfaction of a claim. Appellants accepted this stock *without objection*. We find nothing in these facts that compels us to permit appellants to object belatedly and amend their claims.

Appellants argue that their original claims contained language reserving the right to amend [\*8] and supplement those claims. But such language cannot, as a matter of law, be construed to protect in *perpetuity* appellants' right to amend their claims. Such a construction of this language would truly render illusory all finality achieved

by a reorganization plan. We decline to give so broad an interpretation to appellants' purported reservation of rights.

Appellants were in sole possession of the information regarding the amount of their claims and the record reveals no reason for delay in amending those claims.<sup>3</sup> Although appellants assert that they had to mitigate their damages and so did not know for some time how much lost rent to claim, they state in their brief on appeal that such efforts were "concluded in late 2006." Nevertheless, they allowed, without objection, the plan to be confirmed on November 9, 2006, and, without objection, their initial claims to be reduced on November 30, 2006. It was not until two months later, on January 5, 2007, that they filed their amended claims. Such tardiness cannot be excused in this case.

3 It is for this reason that we find *In re Telephone Co.*, 308 B.R. 579 (Bankr. M.D. Fla. 2004) inapposite. In that case, the IRS was permitted a post-confirmation [\*9] amendment of its claim because it provided adequate notice to the bankruptcy court that the examination of the claim amount was pending and that the debtor was not cooperative, thus producing delay.

We can find no compelling reason that would support amendment of appellants' claims that have been precluded by the *res judicata* effect of Winn-Dixie's confirmed plan. Accordingly, the judgment of the district court upholding the bankruptcy court's decision to sustain Winn-Dixie's objections to amendment of appellants' claims is hereby

AFFIRMED.



FOCUS - 23 of 26 DOCUMENTS

In re: US AIRWAYS, INC., et al. Debtors

Case No. 04-13819-SSM, Chapter 11 (Jointly Administered)

UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF  
VIRGINIA, ALEXANDRIA DIVISION

2005 Bankr. LEXIS 2828

December 29, 2005, Decided  
December 29, 2005, Entered on Docket

**JUDGES:** [\*1] Stephen S. Mitchell, United States  
Bankruptcy Judge

**OPINION BY:** Stephen S. Mitchell

**OPINION**

**MEMORANDUM OPINION AND ORDER  
DISALLOWING CLAIMS NO. 5207 AND 5208  
FILED BY TIMOTHY C. ALEXANDER**

Before the court is the objection of Timothy C. Alexander to the motion of the reorganized debtors for an order disallowing late-filed claims, including two that Mr. Alexander filed in the total amount of approximately \$ 9.7 million. A hearing was held on December 15, 2005, at which Mr. Alexander participated by telephone and represented himself. By separate order, the court granted the debtors' motion with respect to most of the claims but took the matter of Mr. Alexander's claim under advisement. After reviewing the arguments of the parties, the court concludes that the debtor is entitled to an order disallowing Mr. Alexander's claims on the ground that they were filed after the claims bar date.

**Background**

Mr. Alexander was employed for several years as a pilot by Piedmont Airlines, Inc. ("Piedmont"). On September 12, 2004, Piedmont, together with its parent holding company, US Airways Group, Inc., and three affiliates (including the lead debtor, US Airways, Inc.), filed voluntary petitions in [\*2] this court for reorganization under chapter 11 of the Bankruptcy Code. The cases were jointly administered. The court entered an order on

September 15, 2004, establishing a claims bar date of February 3, 2005, for creditors other than governmental units. Notice of the bar date was included in the notice of commencement of the case as well as in a separate notice of claims bar date. The bar date order required that actual notice by mail be provided to all persons known to have claims against the debtor. Additionally, the court directed the debtors to give notice to all unknown creditors by publication in *The New York Times* (national edition), *The Wall Street Journal* (national and European editions), and *USA Today* (worldwide).

The debtor represents that Mr. Alexander was mailed a copy of the notice of commencement of the case but concedes he was not sent the separate notice of claims bar date. Mr. Alexander for his part represents that he was not aware of the chapter 11 filing and did not learn of it until late May 2005. In any event, his two claims (Claim No. 5207 for \$ 7,503,670.00 and Claim No. 5208 for \$ 2,163,422.00), were filed on July 7, 2005 (approximately five months [\*3] after the claims bar date). The \$ 2.2 million claim states as its basis, "Federal Discrimination Claims, ADA and Title VII," while the \$ 7.5 million claim states, "Federal Employment discrimination, HIPPA & PRIA Claims & State Tort Claims."

Mr. Alexander represents that he was hired by Piedmont as a pilot in 1998. In his lawsuit, he alleges that in early 2003 he was placed on disability leave for approximately three months. After being released to return to work, he elected to take leave under the Family Medical Leave Act, beginning April 11, 2003, due to the birth of his first child. While on family medical leave, he received a job offer with another airline, Air Tran Airways, Inc. ("Air Tran"). He accepted the Air Tran offer

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and submitted a resignation to US Airways. Air Tran, however, terminated his employment after approximately a month. Mr. Alexander alleges that Air Tran did so based on what Mr. Alexander says was private and derogatory information that Piedmont provided to Air Tran. In his declaration, Mr. Alexander states that he brought an Equal Employment Opportunity Commission (EEOC) complaint against Piedmont in 2003 and received a right to sue letter. However, the copy [\*4] of the EEOC Determination dated July 22, 2004, that he supplied clearly shows Air Tran, not Piedmont, as the respondent. The right-to-sue letter dated May 31, 2005, does not list a respondent at all, although it contains a "cc:" notation that a copy was provided to Piedmont Airlines.

In any event, on May 4, 2005, Mr. Alexander filed suit against AirTran, Piedmont, and two Piedmont employees in the United States District Court for the Northern District of Georgia for injunctive relief and monetary damages for alleged violations of the Rehabilitation Act, Family Medical Leave Act, 49 U.S.C. § 44703, and "HIPPA,"<sup>1</sup> as well as for state law torts of invasion of privacy, tortious interference with contractual rights and business opportunities, and intentional infliction of emotional distress. In response, the debtor filed a suggestion in bankruptcy on May 24, 2005. Mr. Alexander then filed the two proofs of claim that are at issue, sending copies to the designated claims agent by certified mail. The proofs of claim are dated June 29, 2005, although the cover letter is dated June 31, 2005. The claims were stamped by the claims agent as received on July 7, 2005. [\*5]

1 More correctly, HIPAA, which is the common abbreviation for the Health Insurance Portability and Accounting Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936. The act is codified in several titles of the United States Code, but the medical record privacy provisions on which Mr. Alexander appears to rely are set forth at 42 U.S.C. § 1320d *et seq.*

A joint plan of reorganization for all the debtors, including Piedmont, was confirmed on September 16, 2005. On November 15, 2005, the debtors filed a motion asking the court to confirm the disallowance of late filed proofs of claims, including the two proofs of claim filed by Mr. Alexander. Mr. Alexander objected to the motion on the ground that he had received "no notification of the bankruptcy and the bar date prior to the deadline."

#### Discussion

This court recently had occasion to explore the issue of late-filed claims in connection with a motion brought by another creditor in this same case. [\*6] *In re US Airways, Inc.*, 2005 Bankr. LEXIS 2696, No. 04-13819-

SSM (Bankr. E.D.Va., November 21, 2005), *available at* <http://www.vaeb.uscourts.gov/opinions/ssm/usairways%2004-13819%2011-21-2005.pdf>. As explained in that opinion:

Except for certain scheduled claims that are "deemed" filed, a creditor must file a proof of claim by the claims bar date in order to receive a distribution in a chapter 11 case. Fed.R.Bankr.P. 3002(c). This is subject to two qualifications. First, the creditor must have been provided with constitutionally adequate notice of the claims bar date. *City of New York v. N.Y. New Haven & Hartford R. Co.*, 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953). And second, even when notice is adequate, the court may allow a late proof of claim upon a proper showing of excusable neglect. *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd Partnership*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).

2005 Bankr. LEXIS 2696 at \*6-7. The question before the court, therefore, is whether Mr. Alexander received constitutionally adequate notice of the bar date, and, even if he did, whether a late filing should nevertheless be allowed based on excusable neglect.

#### I.

[\*7] With respect to the issue of notice, due process requires that a known creditor be provided with actual notice of all important steps in a bankruptcy case. A "known" creditor is a party whose claim is sufficiently choate and grounded in fact and law that it necessarily must be removed from the realm of mere speculation and conjecture. To have a known claim -- at least in those circumstances in which the existence of a claim would not otherwise be obvious from the surrounding circumstances -- a creditor must generally provide the debtor with some communication that reasonably apprises the debtor of the basis for the claim and the creditor's intent to hold the debtor liable for it. A creditor who does not meet this test is not considered a "known" creditor and may be given constructive notice of the claims bar date by, for example, newspaper publication. 2005 Bankr. LEXIS 2696, at 10-11.

The court is unable to conclude that Mr. Alexander was a known creditor of US Airways at the time notice of the claims bar date was given. At the outset, there is considerable ambiguity, to say the least, as to exactly what EEOC claims were made and when they were made. On its face, the EEOC Determination of July 22,

2004, that [\*8] Mr. Alexander was discriminated against under the Americans with Disabilities Act was made in a proceeding in which Air Tran, not Piedmont, was the respondent. It is impossible to tell from the Notice of Right to Sue who the respondent is or what claims were asserted before the EEOC. Since the "Charge Number" referred to in the Determination is different from that in the Notice of Right to Sue,<sup>2</sup> it may well be that the two documents relate to different respondents. Given the "2004" in the Charge Number, the court would assume the charge was brought in that year. Without more, however, the court has no basis for determining whether the charge was brought before or after the chapter 11 filing in September 2004 or what stage the charge was at when the chapter 11 petition was filed. Since the Northern District of Georgia lawsuit was filed *before* the Notice of Right to Sue was issued, the court can only conclude that the claims raised in the lawsuit are somehow different from those referenced in the notice. The bottom line is that Mr. Alexander has not established that he had clearly asserted claims against Piedmont at the time the chapter 11 petition was filed. As this court noted [\*9] in its prior opinion, the Constitution does not place upon the shoulders of the debtor the onerous task of broadly speculating as to the identity and theory of recovery of each conceivable or possible creditor. *Id.* (citing *Menonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983)).

2 The Determination refers to Charge Number 110-2004-01032, while the Notice of Right to Sue refers to Charge Number 110-2004-02790.

After concluding that Mr. Alexander was an unknown creditor, the court must next determine whether Mr. Alexander was provided at least constructive notice of the February 3, 2005, bar date. In the present case, the debtors published notice of the bar date in *The Wall Street Journal*, *The New York Times*, and *USA Today*. This court finds that such notice was reasonably calculated under the circumstances to apprise unknown creditors such as Mr. Alexander of the existence of the applicable bar date and afford him an opportunity to present his claims.

[\*10] II.

Even when notice satisfies constitutional requirements, a creditor who does not receive actual notice -- or who receives it but for some reason does not timely act upon it -- may seek leave to file a late claim based on "excusable neglect." The time for filing claims in a chapter 11 case is set by the court. Fed.R.Bankr.P. 3003(c)(3); see *In re Best Prods. Co.*, 140 B.R. 353 at 359 (characterizing the bar date as a court-imposed statute of limitations). However, under Federal Rule of

Bankruptcy Procedure 9006(b)(1), "if a party moves for permission to act after having missed a deadline, the court 'may at any time in its discretion . . . permit the act to be done where the failure to act was the result of excusable neglect.'" *Pioneer Investment Services Co. v. Brunswick Associates, L.P.*, 507 U.S. 380, 399, 113 S.Ct. 1489, 1500, 123 L.Ed.2d 74 (1993).

As the Supreme Court has explained, the determination of what constitutes excusable neglect is largely an equitable one, requiring courts to take into account all relevant circumstances surrounding a party's failure to file a proof [\*11] of claim prior to the bar date. *Pioneer*, 507 U.S. at 394-95, 113 S.Ct. at 1498. The factors that must be weighed include (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant and; (4) whether the movant acted in good faith. *Id.* The burden of proving excusable neglect is on the creditor seeking to extend the bar date. *In re Nutri\*Bevco, Inc.*, 117 B.R. 771, 781 (Bankr. S.D.N.Y. 1990). Additionally, it has been held that "'excusable neglect' is not easily demonstrated, nor was it intended to be." *Thompson v. E.I. DuPont de Nemours & Co.*, 76 F.3d 530, 534 (4th Cir. 1996).

After carefully considering all the circumstances, the court is unable to find that Mr. Alexander's failure to timely file his proofs of claim should be characterized as excuseable neglect. Given the extensive publicity surrounding US Airways's second chapter 11 filing -- which was widely reported in the press -- it was certainly well within Mr. Alexander's control to have become informed about the case and [\*12] to have filed a proof of claim prior to the claim bar date. Additionally, for the reasons stated in the prior opinion, the court can only conclude that the filing of a claim some seven months after the bar date -- and more than a month after the plan was confirmed -- would seriously prejudice the efficient administration of a reorganization case of this magnitude and should not be excused absent rather compelling circumstances, which are simply not present here.

#### ORDER

For the foregoing reasons, the court finds that US Airways provided Mr. Alexander with constitutionally sufficient notice of the bar dates. The court also finds that Mr. Alexander has failed to demonstrate that his late filed claims should be allowed based on excusable neglect. It is, accordingly,

#### ORDERED:

1. The reorganized debtors' motion (Doc. # 3448) to disallow certain late-filed is granted with respect to

2005 Bankr. LEXIS 2828, \*

Claims No. 5207 and 5208 filed by Timothy C. Alexander, and the claims are disallowed as having been filed after the claims bar date.

2. Mr. Alexander is advised that an appeal lies from this order to the United States District Court for the Eastern District of Virginia. Except as provided in Rules 8002(b) [\*13] and (c), Federal Rules of Bankruptcy Procedure, any notice of appeal must be filed with the clerk of this court within **10 days** of the entry of this order. The filing fee for a notice of appeal is \$ 255.00.

3. The clerk shall mail a copy of this memorandum opinion and order, or give electronic notice of its entry, to the parties listed below.

Date: December 29, 2005

Alexandria, Virginia

/s/ Stephen S. Mitchell

United States Bankruptcy Judge

Entered On Docket: 12/29/2005